Supreme Court, U.S.
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In the

Supreme Court of the United States

LAWRENCE BASTIAN AND ROBERT WEISENBURGER,

Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Respondent,

and

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

(1) Whether an order issued pursuant to the All Writs Act, 28 U.S.C. 1651 creating extra-territorial jurisdiction over causes of action based on disputes arising under federal labor law; preempts a cause of action based exclusively on claims of defamation under the common law of the State of Minnesota.

(2) Whether an order issued pursuant to the All Writs Act, 28 U.S.C. 1651 has extra-territorial application to a cause of action based on a labor dispute arising under 29 U.S.C. 411 (5) where the disciplinary hearing process of union officials was not conducted by an Independent Review Board created under the auspices of a Consent Decree issued in the above captioned matter.

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JURISDICTION

The judgment and opinion of the court of appeals was issued on February 23, 1999. The motion for rehearing was timely filed and denied on July 20, 1999. Jurisdiction of this court is asserted pursuant to 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

29 U.S.C. 411(5): Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined...unless such member has been...(c) afforded a full and fair hearing.

STATEMENT OF THE CASE

Two causes of action were brought by Mr. Bastian and Mr. Weisenburger in separate state and federal courts in the State of Minnesota, A.47-49, A.61-64. The cause of action brought in United States District Court for the District of Minnesota alleges a violation of the rights of Bastian and Weisenburger under the provisions of 29 U.S.C. 411, which guarantees the right to a full and fair hearing prior to the imposition of discipline as union members and officers.

The cause of action brought in Hennepin County District Court for the State of Minnesota alleges a common law cause of action for defamation relating to publicity in the Minnesota news media about alleged "criminal" conduct of Mr. Bastian and Mr. Weisenburger. The publicity arose because of the imposition of a Trusteeship over Minnesota Teamsters Public

and Law Enforcement Union, Local 320 and the bringing of disciplinary charges against four elected officers of Local 320, including Bastian and Weisenburger, A.57-60. Statements made to the media by representatives of the International Brotherhood of Teamsters (IBT) characterized the conduct of Bastian and Weisenburger as criminal, A.57-60.

The charges were recommended by the Independent Review Board (IRB), A.78-83, which is a part of a structural reform of the disciplinary process of the IBT under the authority of a Consent Decree issued in the above captioned matter 88 Civ. 4486 (S.D.N.Y.) which is a lawsuit brought by the United States to eradicate La Cosa Nostra influence in the Teamsters organization. A.66-71.

A disciplinary hearing panel was appointed by IBT President Carey. After the panel made its findings, President Carey issued a decision imposing a suspension and fine, A.84-91.

The terms of the Consent Decree grant the IRB the discretion to conduct hearings for cases involving corruption by organized crime. It did not do so in this case, as there was no determination that organized crime was implicated, A.66-71. They had the authority to do so under amendments to the IBT constitution mandated by the Consent Decree.

Bastian and Weisenburger claim, among other things, that the hearing was not "full and fair" because they had no opportunity to cross examine any witnesses involved in the investigation, preparation and bringing of charges, A.61-64. They also claim their right of appeal was not processed for consideration by the general membership.

The two lawsuits were then brought in Minnesota. The IBT and Local 320 filed a Notice of Removal of the defamation lawsuit, claiming that it is preempted as a cause of action governed by the provisions of the Labor Management Relations Act ("LMRA"), 29 U.S.C. 185(a) and the Labor

Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 462. An injunction was issued by the Honorable David Edelstein, United States District Court, Southern District of New York, on June 16, 1997 prohibiting the appellants from proceeding in the courts of the State of Minnesota.

The Court of Appeals for the Second Circuit upheld the District Court issuance of an injunction.

REASONS FOR GRANTING CERTIORARI

The Court of Appeals decision is in contravention of this court's decision in Lynn v. Plant Guard Workers, 383 U.S. 53 (1966), wherein it was held that a claim of malicious libel arising out of a labor dispute is not preempted by federal labor law. The erroneous decision of the lower court has implications for any officer or member of the IBT or any of its local affiliates throughout the country who may be subject to disciplinary proceedings under federal labor law that is subject to the provisions of the All Writs order of the District Court for the Southern District of New York, United States v. International Brotherhood of Teamsters, 728 F. Supp. 1032 (S.D.N.Y), aff'd 907 F.2d 277 (2d Cir. 1990).

The exercise of injunctive power by the District Court for the Southern District of New York also usurps the authority of any other federal district court to exercise the proper venue for a claim for a violation of the right to a full and fair hearing *conducted by the IBT* that is brought under 29 U.S.C. 411 in any case where the IRB has played a role in investigating and/or recommending the bringing of disciplinary charges. The All Writs order is in conflict with 29 U.S.C. 412 which provides that venue shall be in the jurisdiction where the offense occurred.

Mr. Bastian and Mr. Weisenburger request this Court to review whether the IBT misapplied the jurisdictional authority

of the All Writs Order because the disciplinary charges do not implicate La Cosa Nostra criminal influence of the IBT and/or its affiliates.

I. THIS COURT HAS MANDATED THAT A CLAIM OF DEFAMATION IS PERIPHERAL TO THE REGULATORY SCHEME OF THE LMRA AND IS THEREFOR NOT PREEMPTED BY THE LMRA.

In Lynn, supra, it was held that acts of malicious libel arising during a labor dispute are not immunized by the provisions of federal labor law. The making of material statements that are known to be false results in a forfeiture of any protection under federal labor law. A claim for damages to reputation and alienation of associates is a matter that is deeply rooted in local feeling and responsibility. The state remedies of compensation and vindication are beyond the authority of the LMRA.

The issues of malice and damages can be adjudicated without any effect on the administration of federal labor policy, Farmer v. United Brotherhood of Carpenters and Joiners of America, 97 S.Ct. 1056 (1977).

The scope and purpose of the Consent Decree is to eradicate La Cosa Nostra criminal influences in the IBT and/or its affiliates. A claim for defamation alleging falsity of defamatory statements and charges made by IBT officials that are made maliciously does not interfere with the authority of the IRB to investigate and recommend charges made in good faith and for proper purposes and on a proper occasion, Farmer, supra. This is also the standard under Minnesota law affording a qualified immunity for publishing otherwise defamatory statements, Hebner v. Great Northern Railway Company, 80 N.W. 1128 (Minn. 1899).

Bastian and Weisenburger allege the falsity of the charges recommended by the IRB as a predicate fact to the allegation

of falsity of the media statements about those charges. Minnesota law requires such specificity, Stuempges v. Parke Davis & Company, 297 N.W. 2d 252 (Minn. 1986). No IRB official has been named as a defendant or sued. Liability for defamation is based on the statements to the media that make false implications from juxtaposed or omitted facts, Toney v. W.C.C.O. Television, 85 F.3d 383 (8th Cir. 1996), Phipps v. Clark Oil and Refining Corp., 408 N.W. 2d 569 (Minn. 1987), Carter v. Peace Officers Standards Board , 558 N.W.267 (Minn.App. 1997).

The procedural posture of the defamation action is distinguishable from the case in which the Second Circuit upheld the application of an All Writs order to proceedings implicating the Consent Decree, United States v. IBT, 907 F.2d 277 (1990). That case was pursued by the affiliates as a challenge to the regulatory scheme that was integrated into the organizational structure of the IBT by operation of the Consent Decree. The decision notes the significant risk of inconsistent interpretations of the Consent Decree and the risk that *court officers* will be subject to inconsistent judgments.

No interpretations of the Consent Decree are necessary in the appellants' cause of action based on allegations of the falsity of specific disciplinary charges brought against them and the malicious publication of those charges in a manner implicating criminal activity. No judgements are sought against court appointed members of the IRB.

In a subsequent case, U.S. v. IBT, 109 F.3d 846 (1997) the issuance of an injunction was upheld where an affiliate challenged the imposition of a trusteeship over an affiliate based upon recommendations of the IRB. The findings of the IRB were challenged in the context of its "exclusive jurisdiction to decide any and all issues relating to the purpose, operation and authority of the IRB" and the "interpretation of IRB rules", U.S. v. IBT, supra, 109 F.3d at p. 847. This is an issue that is central to the operation of

federal labor policies. It is not an issue in the case at bar where the appellants have not challenged the imposition of a trusteeship for the business affairs of Local 320 or the recommendation for a trusteeship by the IRB. Even then, the Court suggests that a showing of bad faith by President Carey may have led to a different outcome, U.S. v. IBT, supra, 109 F.3d at p. 850.

The Second Circuit deviated from its previous adjudicative principles in its analysis of the extra-territorial application of the Consent Decree with regard to the defamation action. Where the federal courts do not have subject matter jurisdiction over a defamation action brought in Minnesota state court, the All Writs Act does not authorize such jurisdiction in New York, U.S. v. IBT, supra, at p. 281.

This analysis comports with the standards for adjudication of when federal preemption applies to a cause of action founded on state law, English v. General Electric, 496 U.S. 72 (1990), citing Shaw v. Delta Airlines, 463 U.S. 85 (1983).

The motivation underlying a state law claim of defamation is not the same as the federal labor law policy of eradicating La Cosa Nostra corruption in the Teamster organization. Nor does a state court claim of defamation interfere with the objectives of Congress in prescribing federal regulation of labor relations. To the contrary, Congress has chosen not to define preemption in the LRMA statutory scheme. Shaw, supra. Nor is malicious and defamatory conduct by union representatives arguably protected or prohibited by federal labor law, San Diego Building Trade Council v. Garmont, 359 U.S. 236 (1959), Lynn, supra.

Should this court not grant certiorari review, there is a significant risk that the extra- territorial application of the Consent Decree will be wrongfully extended to preclude the

personal claims of other individuals associated with IBT affiliates around the country.

II. THE CONSENT DECREE IS LIMITED IN ITS APPLICATION TO ITS FOUR CORNERS WHICH IS DESIGNED TO ADDRESS LA COSA NOSTRA INFLUENCE IN THE IBT ORGANIZATION, INCLUDING CRIMINAL OR OTHER CORRUPT CONDUCT THAT PERPETUATES SUCH INFLUENCE.

The United States government brought a RICO suit against the IBT to prevent the use of fraud, embezzlement, bribery or extortion to perpetuate the domination of the Teamsters by the La Cosa Nostra or other criminal elements, U.S. v. IBT, 978 F 2d. 68 (2nd Cir. 1992). The goal of ridding the Teamsters from the corrupting influence of organized crime justifies the creation of an IRB to further that goal. It also justifies the framework for implementation of a disciplinary hearing process conducted by the IRB.

The IRB's authority to conduct hearings is limited to the four corners of the Consent Decree agreement, which is for the purpose of implementing a neutral process for rooting out corrupt or dishonest union officials where organized crime is implicated. (See U.S. v. Armour, 402 U.S. 673 (1971). For this reason, the IBT Constitution continues to authorize the traditional alternative disciplinary hearing process that is implemented by IBT's elected officials when the influence of organized crime is not involved. Indeed, neither the IRB or the appellees have ever contended that Local 320 or its officers are dominated by organized crime.

The alternative process was followed in this case. The challenge to the factual findings of the IRB in *recommending* discipline must be distinguished as a predicate to the claim that the appellants were deprived of the right to a full and fair

hearing to rebut those findings. The rationale underlying the extra-territorial application of the Consent Decree pursuant to an All Writs order does not apply to this case. Should this court not grant certiorari review, there is a significant risk that the IBT or the United States will abuse its authority under the Consent Decree and force all of its subordinate officers to litigate statutory claims that involve the disciplinary hearing process in the federal courts of New York. 29 U.S.C. 412 mandates a contrary result.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed, and the matter remanded to the district court for further proceedings to transfer these causes of action back to the state and federal courts of Minnesota.

Respectfully submitted

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Court-house, Foley Square, in the City of New York, on the 23 day of Feb, one thousand nine hundred and ninety-nine.

PRESENT: HON. JAMES L. OAKES,
HON. DENNIS JACOBS,
HON. ROSEMARY S. POOLER,
Circuit Judges.

- x

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-v.- 98-6074

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, AFL-CIO,

Defendant-Appellee,

LAWRENCE BASTIAN and ROBERT WEISENBURGER,

Appellants.

- x

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JAMES L. LINSEY, New York, NY (Sonja D. Fritts, Cohen, Weiss and Simon, on the brief), for Defendant-Appellee International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO

Appeal from a June 16, 1997, order of the United States District Court fur the southern District of New York (Edelstein, J.) enjoining defendants from proceeding with two

actions in any forum other than the Southern District of New York.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of the district court is **AFFIRMED.**

Plaintiff-appellants Lawrence Bastian and Robert Weisenburger, former officers of Minnesota IBT Local 320, were discharged and fined by the IBT for financial improprieties discovered during the course of an investigation by the Independent Review Board ("IRB"). Bastian and Weisenburger then brought two actions in Minnesota federal court against various defendants alleging that they were constructively discharged from their union posts in violation of 29 U.S.C. § 411 et seq. and that comments regarding the investigation made by the IBT to the media were defamatory. IBT then moved in the Southern District of New York to enjoin Bastian and Weisenburger from proceeding with those actions in any other forum. By an order dated June 16, 1997, the district court granted the injunction under the court's previously issued All Writs Order. See United States v. IBT ("All Writs Order"), 728 F. Supp. 1032 (S.D.N.Y.), aff'd 907 F.2d 277 (2d Cir. 1990). Bastian and Weisenburger appeal the issuance of the injunction.

We affirm for substantially the reasons articulated by the district court.

The All Writs Order prohibits all IBT members or affiliates from proceeding with any action that "challenges, impedes, seeks review or relief from, or seeks to prevent or delay any act of [the Consent Decree officers] in any court or forum in any jurisdiction except [the Southern District of New York]." All Writs Order, 728 F. Supp. at 1039 n. 5. The district court concluded, and we agree, that the constructive discharge action and the defamation action challenged the

"findings of the IRB" and the "substance of IRB reports" and therefore were within the exclusive jurisdiction of the southern District pursuant to the All Writs Order. See IBT v. Local Union 714, 109 F.3d 846, 849 (2d Cir. 1997).

Constructive Discharge. This action named the IRB (among others) as a defendant and raises specific challenges to the charges recommended by the IRB. The fact that the IRS and its officers are named defendants in this action is alone sufficient to support an injunction under the All Writs Order. See United States v. IBT ("Erbacci"), 911 F. Supp. 743, 748-49 (S.D.N.Y.), aff'd, 96 F.3d 653 (2d Cir. 1996). In addition, the premise of the Minnesota action is that the discharge of Bastian and Weisenburger was based on the IRB's "false charges" and "finding of wrongdoing . . . which [was] false." The binding litigation of such questions in many fora and jurisdictions would obviously impair the ability of the IRB to function adequately and efficiently under the consent Decree. The injunction under the All Writs Order was proper.

Defamation. The IRB is not a named defendant in this Minnesota action, but the action challenges the findings of the IRB and the substance of the IRB/IBT discipline process established by the Consent Decree. The Consent Decree and the All Writs Order have a broad reach and extend to cover all litigations that "challenge the findings of the IRB or its underlying fairness." Local Union 714, 109 F.3d at 849. This action for defamation depends on a showing that the IRB investigation was improper and that the IRS charges were false; therefore, the defamation litigation falls squarely within the four corners of the All Writs Order.

Bastian and Weisenburger's remaining arguments are without merit. Nothing in the Consent Decree or the All Writs Order limits the consent Decree to matters involving organized crime or to matters arising under federal labor laws. See, e.g., United States v. IBT ("Wilson, Weber & Dickens"),

978 F.2d 68 (2d Cir. 1992) (embezzlement and the use of strong-arm tactics within the scope of the Consent Decree despite no "organized crime" connection).

The district court's order is **AFFIRMED.**

FOR THE COURT:
CAROLYN CLARK CAMPBELL, CLERK
By:

/s/
Lucille Carr, Deputy Clerk

766ggIBTh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

Plaintiff,

v. 88 Civ. 4486(DNE)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

----------x

June 16, 1997
2:15 p.m.
New York, N.Y.

Before:

HON. DAVID N. EDELSTEIN,

District Judge

APPEARANCES

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- - - -

(In open court)

(Case called; all parties ready)

THE COURT: The purpose of this hearing is to hear argument why this Court should not issue a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 enjoining all parties from litigating the action known as Lawrence Bastian v. Minnesota Teamsters Public and Law Enforcement Employees Union Local 320, civil action No. 97 Civ. 1101 and 97 Civ. 1289 in any forum other than this court. I will briefly recount the facts underlying the instant proceeding for the record.

Bastian -- do I pronounce it correctly?

MR. SINGER: Yes, your Honor.

THE COURT: Lawrence Bastian and Robert Weisenberger, former officers of Minnesota Public Law Enforcement Employees Union Local 320 of the IBT are plaintiffs in both of the cases at issue in this hearing. Bastian and Weisenberger resigned from office after an emergency

trusteeship was imposed over the affairs of Local 320 by IBT General President Ron Carey on May 2, 1995. Two days later, the Independent Review Board formally recommended the imposition of such trusteeship following its own investigation into the affairs of Local 320.

In response to these actions, plaintiffs filed two separate complaints. In one complaint, Bastian and Weisenberger allege that the investigations by named defendants IRB and IBT produced false charges that resulted in their constructive discharge from Local 320.

In the other, plaintiffs contend that both the IRB's recommendation that Local 320 be placed in trusteeship and Local 320's following of this recommendation defamed plaintiffs, were false, and did not have a factual basis.

The IBT learned of the two Bastian litigations in late May 1997. Immediately upon learning of the defamation action, which plaintiffs filed in Minnesota state court, counsel for IBT advised plaintiffs' counsel that prosecution of the state action would interfere with this Court's jurisdiction under the Consent Decree and demanded that the action be withdrawn. Plaintiffs' counsel refused to do so, and advised the IBT that the plaintiffs also had filed the constructive discharge action. Counsel for the IBT then advised plaintiffs' counsel that continued litigation of both actions would interfere with this Court's jurisdiction under the Consent Decree and demanded that both actions be withdrawn.

After receiving and reviewing the relevant papers, notifying the government and effecting removal of the defamation action to Minnesota Federal court within the required time period, IBT's counsel brought the instant motion before this Court.

In its papers, the IBT maintains that the Bastian litigation should be heard by this Court because prosecution of these matters in Minnesota would subvert the Court's

exclusive jurisdiction over administration of the Consent Decree and the work of the IRB for three reasons.

First, the IRB contends that the relief plaintiffs seek in a constructive discharge action -- damages against the IRB and IBT among others, as well as full reinstatement of plaintiffs to their positions at Local 320 despite the trusteeship -- challenges the substance of the IRB's recommendation of a trusteeship and the IBT's implementation of this recommendation and renders both entities liable for damages for acting inconsistent with their duties under the Consent Decree.

Second, the IRB alleges that continued litigation of the defamation would interfere with the IRB's authority to: (1) investigate members and affiliates of the IBT and, (2) issue both trusteeship and disciplinary recommendations based on investigation, and, (3) monitor the effectiveness of the IBT's subsequent action.

Finally, the IBT states that the -- Bastian litigations pose significant risk that: (1) other courts will adopt interpretations of Consent Decree inconsistent with the interpretations of this Court; (2) the IRB will be heavily burdened with duplicative litigation in various locations throughout the United States and, (3) judicial resources will be wasted by litigation of similar issues multiple times in courts unfamiliar with the Consent Decree.

Plaintiffs counteract these arguments. They refute IBT's position. They question whether the Consent Decree is implicated in the Bastian litigation because there is no allegation or charge of corruption against plaintiffs relating to organized crime; the judicial proceedings at issue do not raise issues and questions requiring court intervention into the ongoing business affairs of an IBT local; and there is a ongoing appointment of a trusteeship in effect; the hearing process regarding the charge against plaintiffs was not under the auspices of the IRB but, rather, the IBT and, plaintiffs'

constructive discharge occurred before, and is unrelated to, the IRB's recommendation that Local 320 be placed in trusteeship and that plaintiffs be disciplined.

In addition, plaintiffs' counsel reject the notion that their case risks subjecting the Consent Decree to inconsistent interpretations by different courts. They claim that plaintiffs' claims are focused exclusively on individual damages to plaintiff, seek review of a hearing process that was not administered by the IRB and seek damages for the actions of IBT and Local 320 officials only, not actions taken by the IRB.

Finally, plaintiffs' counsel asserts that plaintiffs' claims have been in good faith and are not frivolous, duplicative or harassing.

I will hear from the IBT.

MR. LINSEY: Thank you, your Honor. My name is James Linsey from the law firm of Cohen, Weiss and Simon on behalf of International Brotherhood of Teamsters, the movant in this action.

The IBT's motion for preliminary injunction involves two lawsuits brought by the plaintiffs, Bastian and Weisenberger, former officials of Local 320 in the Federal and state courts of Minnesota. The first lawsuit, number 97 Civ. 1101, Exhibit E to my declaration, was filed in Federal District court in Minneapolis on May 2, 1997 against, among other parties, the Independent Review Board itself. It names the Independent Review Board as a party defendant in the first lawsuit and the IBT and others alleging that the plaintiffs were constructively discharged from their union offices as a result of an IRB investigation and "false charges of embezzlement and other conduct that adversely impacted upon their professional stature." That's at paragraph 8. That complaint seeks damages in excess of $50,000 and injunctive relief to restore plaintiffs to their rights.

The IBT learned about this case when plaintiffs' counsel faxed a copy to me on June 4, 1997. No formal service of the constructive discharge case was made on Local 320 until approximately June 9, 1997 and serviced on defendant Yates on or about June 11 or indeed June 12, one day after this Court entered the temporary restraining order here in New York.

The second lawsuit, now numbered 97-1289, and attached as Exhibit B to my declaration, was originally filed in Minnesota state court on May 8, 1997 by the same plaintiffs and against the IBT and others alleging that, in paragraph 4 "On or about April 11, 1994 the International through its President Carey initiated a review of the business operations of 320 under the auspices of the independent review board an agency of the international."

Paragraph 5 "On or about May 3, 1995 the International by and through its President Ronald Carey placed 320 into receivership status under the authority of the constitution and by the laws of the international. The action was initiated by the International on the basis of alleged factual irregularities of 320 which were in fact a pretext to remove and replace the officers of 320." And then it continues on in other parts.

Paragraph 6: "On or about May 9, 1995, the International by and through its Independent Review Board published 'proposed charges' against the plaintiffs herein and other officers of 320 by dissemination of these charges to Yates as trustee of 320. Thereafter, Yates acting on behalf of 320 under the authority of his position as trustee initiated published charges against the plaintiffs herein which evolved from the proposed charges published by the international."

And paragraph 7 alleges that these charges, and these charges were originally promulgated but the Independent Review Board on May 4, 1995 recommended trusteeship and that recommendation was at the very conclusion of a long

report following its investigation. And on May 9, 1995, the Independent Review Board recommended charges that President Carey charge these individuals for financial improprieties.

THE COURT: Name the individuals.

MR. LINSEY: These individuals being plaintiffs Weisenberger and Bastian.

Basically, the defamation lawsuit charges that these charges, these charges that were brought by the International upon the recommendation, the formal recommendation and investigation of the Independent Review Board are libelous, and they seek damages in excess of $50,000 for each plaintiff.

Now, on May 28th we removed the state court defamation complaint to Federal court in Minneapolis, and that's how it got the number 97-1289. You'll also note, however, that at Exhibit F of my declaration there is a proposed amended complaint bearing the Federal court caption in Minneapolis as an amended complaint the dated May 30, 1997 that was indeed sent to me and sent to others.

However, I checked with the clerk's office of the Federal District Court in Minneapolis and they have no record of that amended complaint being filed, so what is presently on file and what is presently the subject of the injunction are the state court complaint that was removed to the Federal court which is Exhibit B to my declaration and the earlier May 2, 1977 action which is 1101.

Now, as set forth in our complaint -- our memorandum of law I mean, both these lawsuits clearly implicate the Consent Decree in this case, because --

THE COURT: Well, a distinction is sought to be made that since this doesn't involve corruption or association with organized crime, thus it does not implicate the Consent Decree.

MR. LINSEY: Well, I think that flies in the face of many decisions of this Court.

THE COURT: Well, dwell on it and focus it.

MR. LINSEY: I think if we go back to the Consent Decree and the Consent Decree as explained when this Court issued the All writs injunction one year after the Consent Decree explained the genesis of the RICO action against the IBT and the individual defendants, explained the reasons and the underpinnings and the reasons why duplicative litigation was damaging, why litigation that would risk inconsistent findings was problematic for this Court; litigation that could drag the IBT and/or the IRB pursuant to this process that was fashioned in this Court and supervised by this Court into each and every jurisdiction in the United States and provinces in Canada was problematic.

To read those decisions and then argue that in this case there is not the implication of organized crime, flies in the face of those decisions. And the reason is this. The reason is that this Court supervises the rooting out of corruption and the rooting out of corruption occurs in lots of different ways. The rooting out of corruption occurs in an organized fashion in lots of different locals or it has been alleged to have occurred in lots of different locals through financial improprieties, through things such as the rental car scams, or the allegations; through such things as massage therapy; through such things as magazines subscriptions, and to just kind of cast things off and say that this does not involve organized crime, these allegations, number one, are criminal, and number two, are conducted in an organized fashion, and, number three, are the subject of investigation by the Independent Review Board pursuant to this Court's Consent Decree to root out precisely that type of conduct.

There's nothing in the Consent Decree that says that this court's jurisdiction is limited to investigations of a particular crime family or that there has to be an allegation of a crime-family connection in order to give the IRB jurisdiction to conduct an investigation.

It is the organized nature of the criminal activity that was the subject of the Consent Decree, and that's the basis, the underpinning of the Consent Decree. That's exactly what the IRB did in this case.

Now, the plaintiffs attack that both in the constructive discharge case and in the defamation case. In the constructive discharge case, they claim that the charges were pretextual, they were designed to get at these particular plaintiffs, to unseat them unfairly. And all of this flowed from the Independent Review Board's recommendation of the trusteeship back in the spring of 1995, May 2, 1995, and that constructive discharge action is brought against not only the IBT but also the IRB as a named party defendant. Certainly that implicates the Consent Decree.

The second lawsuit, the defamation action, similarly involves the Consent Decree because it is attacking the IBT for the promulgation of charges which were set out in the IRB report.

Now, obviously this Court has some familiarity with the Consent Decree. Obviously this Court has great familiarity with the All Writs Act decision that this Court has issued. And I'm not telling this Court anything new when this Court, in one of the hearings, asked the counsel similar to Mr. Singer or whatever to imagine --

THE COURT: Not quite similar.

MR. LINSEY: Not precisely the same, but to imagine that in cases like this, where the IBT acts to promulgate charges and impose trustee charges based on IRB recommendations that occur across the 50 states and in Canada, if the IBT can be dragged into each and every one of those jurisdictions and the veracity of the IRB recommendations and procedures be tested in each and every one of those jurisdictions before hundreds and hundreds of different damages, obviously the risk of inconsistent rulings attaches.

Now, what the plaintiffs here propose to do is this. The plaintiffs in one of their letters to me proposed to take the constructive discharge action and well, they will consent to let you have it, Judge Edelstein, but you can't have the defamation action because that's got to be determined by, first, on the remand motion by Chief Judge Magnuson in Minneapolis and then perhaps by a Minnesota state court judge.

The issues that will be on trial in that case will be the same or overlapping issues as on trial here. And I guess it just depends who decides them quicker and with more forcefulness as to who prevails on what is going to risk inconsistent determinations on such issues such as the propriety of the trusteeship, whether or not these charges were pretextual, whether or not the plaintiffs were afforded due process rights under the Federal labor laws and also under the procedures of the Consent Decree.

All of these things would be litigated not only in this courtroom but in a courtroom, either Federal or, if the plaintiffs have their way, in a state court determined by either a state judge or, if the plaintiffs have their way, again by a state court jury in Minnesota.

These things plainly implicate the Consent Decree and plainly should be enjoined under this Court's All Writs order entered by this Court in 1990. Thank you, Judge.

THE COURT: I'll now hear from the Bastian counsel.

MR. SINGER: Your Honor, may it please the Court. Am I admitted for purposes of making an argument?

THE COURT: Sure. Make yourself comfortable. Assume any position you'd like.

The first question I'd ask you, are you familiar with many of the decisions in this case, yes or no?

MR. SINGER: Yes.

THE COURT: Fine. Now tell me what particular decisions bearing on this issue are you familiar with.

MR. SINGER: I've read a number of them. The one that --

THE COURT: No. No.

MR. SINGER: The one that comes to mind immediately, that I'm most current on, is the Simpson decision that just came out in the Second Circuit because it is the one that I am --

THE COURT: What did the Second Circuit say?

MR. SINGER: The Simpson case that just came back from the Second Circuit is the one I'm most familiar with because I've read it most currently. There are two other cases, I can't tell you the precise name but they involve locals in Illinois.

THE COURT: Is that in your response papers?

MR. SINGER: I didn't address the cases themselves --

THE COURT: Didn't you think it was important?

MR. SINGER: Yes, and may I address why I feel they are distinguishable?

THE COURT: Proceed.

MR. SINGER: In particular with the Simpson case, I noted that the issues, the disciplinary issue involving Officer Simpson was his --

THE COURT: Well, I'd like to get some direction from you. Before you proceed can you give me just a brief review of what you believe the All Writs Act contemplates and is calculated to do?

MR. SINGER: I believe it contemplates and it is calculated to remove from the Teamster organization, from the top down --

THE COURT: No, the All Writs Act doesn't just apply to Teamsters. Have you heard of the All Writs Act?

MR. SINGER: Yes, I have.

THE COURT: Well, give me some brief review of what you believe it is calculated to do; why does it exist.

MR. SINGER: The act itself is calculated to give extraterritorial jurisdiction to hear issues in a particular court and centralize the deliberation of issues.

THE COURT: Why?

MR. SINGER: For the very reasons that have been set out in this Court's decisions, namely duplicative litigation over the same issues and a waste of judicial resources. And if I may address what I have done in this case to try and address that and make some sense out of it --

THE COURT: Do you believe that the All Writs Act applies here?

MR. SINGER: No.

THE COURT: Why?

MR. SINGER: Because I do not believe that the Consent Decree is implicated under the facts of this case in either cause of action.

THE COURT: Do you believe that what is basically different in this case from what you concede to be other cases is that this does not involve corruption associated with Cosa Nostra?

MR. SINGER: That's one distinction. There are several other distinctions.

THE COURT: All right. Go on. Isn't that what you really rely upon?

MR. SINGER: That's my primary reliance.

THE COURT: Now, what is the secondary?

MR. SINGER: The secondary reliance is that in fact the process of having an Independent Review Board and imposing trusteeships and judicial intervention to assure, or judicial oversight to assure that that works is involved in situations where there is a trusteeship issue perhaps because of corruption but to maintain the integrity of allowing the oversight of the trusteeship of the local when at least probable

cause has been reached, that there's some irregularities from corruption or any other reason that requires intervention through a trusteeship.

What distinguishes this is case is there is no longer a trusteeship in effect for this local, nor have any clients ever raised any issue of whether or not there should be a trusteeship. One of the facts that the court noted, recited in the materials that you've read is that the trusteeship was imposed and then my clients resigned.

The reality is one of the reasons we contend this case is different from those that come under the All Writs Act to protect the integrity of the Consent Decree is that it is my client's claim they were induced to resign before they were even notified or in fact there was a trusteeship imposed by representations of officials who are not from the IRB. And we will stipulate today --

THE COURT: You won't stipulate to anything. You must rely on your argument and on your papers.

MR. SINGER: OK. So the contention is that the constructive discharge claim doesn't flow from the IRB's investigation or the recommendation for a trusteeship because that particular nexus of facts occurred before the trusteeship was promulgated in a public fashion.

Similarly, with regard to the defamation, we are alleging as predicate facts things that the IRB did; but the nexus of the claim for actionable defamation is based exclusively on that paragraph in the amended complaint that alleges specific quotes in the newspapers in the city of Minneapolis and in White Bear Lake where Mr. Weisenberger is president of the township, where specific quotes attributed to specific representatives of the IBT and not the IRB and representatives of Local 320.

Those specific quotes had not been verified until after the complaint had been filed; the opportunity to do so had not yet been completed. I started this case late and there

was a statute of limitations for a Comment that was made on the date this action was filed. That statute of limitations would have lapsed. Hence, our intent is and was and always was to base our allegations of defamation as actionable for damages only on the quotes in the newspaper. The amended complaint comes about once the newspapers were actually, all of them were in my hand and I had an opportunity, as Minnesota pleading law requires, to specifically include the quotes in the pleadings.

The predicate act is what the IRB did and is what representatives not of the IRB but of the IBT and Local 320 did with that investigative report. They didn't just say here's a copy of the report. They went far beyond that. And it is our position that the jurisdiction of this court need not extend to cover every ramification under every circumstance where it is not the Consent Decree and its inception that's in question or the IRB's authority to conduct an investigation or to make recommendations but the agencies are solely and exclusively what did other individuals and other entities do with that information, how did they mischaracterize it, if you will, to cause the damage that was ultimately caused to my clients.

I submit that I have not seen one decision coming from this court where it is exclusively a claim based on defamation and defamation alone where in that lawsuit standing alone there is no allegation or request --

THE COURT: What does that got to do with the problem before this Court? We are not here to determine whether your clients have been defamed because they have been called embezzlers. We are not here to do that. We are not here to resolve whether the truth is an absolute defense. We are not here to do that at all. That's not the issue before this Court. Or aren't you aware of that?

MR. SINGER: Your Honor --

THE COURT: I'm not here to decide whether your clients have been defamed or not.

MR. SINGER: Your Honor, that's consistent with my argument, that that is an issue that falls --

THE COURT: Apparently you are on a different track altogether, which is pathetic. I'm not here to decide the allegation of defamation, slander or libel.

MR. SINGER: I'm asking the court --

THE COURT: But you are not aware of that.

MR. SINGER: I'm asking the court --

THE COURT: All you are here to do is to persuade me that the Consent Decree is not implicated, that the All Writs Act does not apply, that this Court doesn't have jurisdiction. Is that clear?

MR. SINGER: Yes, your Honor. May I also address --

THE COURT: Now, you started off at least by showing some wisdom that you are relying on the fact that the reason you think this is different is because it does not involve corrupt association or conduct.

MR. SINGER: Nor is the defamation action --

THE COURT: Go on. I won't interrupt you again.

MR. SINGER: Thank you. With regard to the labor-based action, again, procedurally in terms of how we got to this position before this court with an action that was started in Minnesota, I want to clarify something. My representation to counsel about hearing this motion was that I was willing and I respect this Court's authority to have this matter transferred from Minnesota so you could decide this very issue, is this a case that should be in New York or not because of the long history of your involvement with these issues.

I did not agree that per se the venue of the case should be here for all issues. What I suggested to counsel is that we could transfer venue here, let the court hear the very arguments it's hearing now --

THE COURT: I'll give you an opportunity and an invitation. If you want a determination whether your clients have been defamed, let's go to trial.

MR. SINGER: Well, that's a second issue.

THE COURT: But that's what you want to do. You want to go to trial but you don't want to go to trial here.

MR. SINGER: That's --

THE COURT: I mean, you are not going to get a verdict merely by claiming that your clients have been libeled and defamed, isn't that so? You have to prove it.

MR. SINGER: That's correct. I would submit, though --

THE COURT: Then what are you arguing about? I'm giving you the opportunity of a lifetime. If you want to go to trial, I'll set it down immediately and we will find out whether your clients have a claim or a case.

MR. SINGER: But the issue on the defamation case is whether or not we are entitled to have that case heard in the Minnesota courts.

THE COURT: You don't want to go to trial?

MR. SINGER: I want to go to trial where I believe my clients are entitled to have their trial.

THE COURT: Continue and finish your argument.

MR. SINGER: With regard to the posture --

THE COURT: If your clients are here, I'm giving them a golden opportunity. If they win, fine. Let's go to trial.

MR. SINGER: Ultimately, if the court concludes that that matter should be here then I respect that --

THE COURT: Finish your argument.

MR. SINGER: Going back to the labor case, if this Court is inclined to believe that the Consent Decree is in fact implicated, I have read the cases that I have read, but I believe the organized crime issue in just about every case that I've read be has been implicated from what I can read on the surface of the appellate decisions insofar as there has been

discipline imposed because of associations with individuals who have connections to organized crime.

I think the Simpson case highlights that where Mr. Peters had been removed from the union organization and Mr. Simpson's dereliction allowing Mr. Peters to have association with the local. I cannot read beneath the surface from the appellate level and all the facts as well as counsel for the union, your Honor, so I stand corrected if that's the case. But the cases I have read are different issues that go beyond and are far more compelling.

I would submit that, if every act of a trustee who is put into the trusteeship because of a report from the IRB that resulted in the creation in the trusteeship, if every act of that trusteeship is subject to review of this Court we will have ordinary employment disputes from a variety, coming from the every state, and I believe a bright line should be identified and I believe in this case the facts fall below that bright line of what this Court's intended jurisdiction is.

In fact I am aware that in Minnesota other claims involving acts that have occurred by the people running 320 since there was a trusteeship imposed have been brought into Minnesota courts without question. My point being, when these officers resigned there was a trusteeship and legal counsel for 320 who made recommendations to my client and that has nothing to do with the integrity of what the IRB did or the integrity or the authority to do the investigation or the fact that there is a Consent Decree in the first place.

It's how it was implemented in the local level. The hearing panel was appointed by President Carey, not the IRB, on information and we are making allegations as to how that hearing panel conducted the hearing, and there is a counterbalance to all this and those are subsidiary issues that do not go to the very heart of what the Consent Decree was for and what it is intended to remedy and those subsidiary issues will not, I suggest, interfere with the Court's proper

authority to make sure that that Consent Decree is interpreted and carried out in its proper way.

Once you get past the question on whether or not there is organized crime and the fact that there is an IRB process that's in place, and the understanding is that we are not challenging that IRB process but only where it went once it got into the hands of the local officials, I think that's where the line would be drawn, and I submit the TRO would not be appropriate if the court would agree with that position.

If the court is inclined to disagree, then the alternative remedy I would request is that we be permitted to transfer venue, rather than a dismissal which was initially sought by counsel.

I think the distinction in the appellate decisions involving this court in considerations for having a process under the All Writs Act, initially I recall the issue was raised whether the government should be required to make a motion for an a change of venue in each and every instance in the local jurisdiction on an ad hoc basis if it chose to do so, and this Court was disinclined to allow that to happen.

I'm representing to this court that if the court is inclined to disagree with our position that this is not a matter that should be under your jurisdiction we would stipulate to a transfer of venue and would not oppose it.

We are here before you to decide this issue. We are not here before a Minnesota judge. The filing of the motion for remand, again as counsel filed the notice of removal we have time limits and we filed it so it is of record. We can't file our amended complaint in Federal court under my understanding in Minnesota until that motion is heard.

The amended complaint is the nexus of what we are here about now. I believe that service is complete on the attorneys for the defendants and I believe that a careful review of that amended complaint will show the IRB is not a named party, nor is it intended to be, nor is its publication of the

charges in terms of its transmittal to the trustee the basis for the defamation claim. If the court has any further questions, otherwise I've concluded my remarks.

THE COURT: Thank you.

MS. GOLDMAN: Your Honor, the government supports the IBT's application in this matter. I think Mr. Linsey has very carefully set out the basis for it. I will be very brief.

With respect to the constructive discharge complaint, two things are very clear. One is that the IRB is a named defendant. The second is in the papers submitted today by --

THE COURT: At approximately 1 o'clock, despite the fact that they had an entire weekend to prepare those papers.

MS. GOLDMAN: -- plaintiffs Weisenberger and Bastian have submitted affidavits in which they state expressly that they "seek a review of the actions of agents and representatives of the IBT, IRB and trustee in the course of those proceedings to demonstrate that my rights to due process and to a fair hearing were deprived." So it is clear that the actions of the IRB are at issue in the constructive discharge complaint.

The All Writs order that this court has issued clearly bars plaintiffs in this case "and any other IBT entity or members from taking any legal action that challenges, impedes, seeks review of or relief from any act of the court officers appointed by this Court pursuant to the Consent Decree."

Nothing in the All Writs order limits challenges to organized crime matters; nothing in the IRB rules limits the IRB to considering organized crime matters. The IRB has broad jurisdiction on disciplinary matters, and to the extent that plaintiffs are going to challenge the actions of the IRB with respect to disciplinary measures they have

recommended, the All Writs order is clear that a challenge to that belongs in this court.

With respect to the defamation action, while it is not clear which is the operative complaint at this time, the charges that were leveled by or that were recommended by the IRB against the plaintiffs here have been alleged in the complaint to be false, and to the extent that challenges have been raised to statements made by the IBT, the IBT is likely to defend those actions on the grounds that the statements made by the IBT were truthful. Much of the defense to that may involve the IRB's proof, the IRB's recommendation, all of which would be at issue, and, accordingly, that action as well as the constructive discharge action belongs in this court to avoid all of the problems that the All Writs order was designed to avoid, including duplicative litigation and inconsistent judgments.

MR. LINSEY: Your Honor, may I be heard very briefly?

THE COURT: Yes.

MR. LINSEY: Obviously I agree with what Ms. Goldman just said.

However, when Mr. Singer said that what he would be comfortable with if the court were to decide in the IBT's favor would not be dismissal of the action but transfer of both actions to your Honor, just in that regard, since we are unclear at this point which defamation action is the operative complaint, number one, and, number two, whether party defendants were properly served either before or after this Court's injunction on June 11, 1997 of the earlier complaint, the constructive discharge complaint, we would just ask the court's consideration of the inclusion in any determination here that the defendants' time to answer both complaints be extended until 20 days after, number one, the issues of jurisdiction and venue are finally resolved and all appeals are

exhausted, or, number two, service of each complaint is effected, whichever is longer. Thank you, your Honor.

THE COURT: Pursuant to Rule 65(c), no preliminary injunction shall issue "except upon giving of security by the applicant in such sum as the court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." In the event this Court grants plaintiffs' request for a preliminary injunction, this Court will order plaintiff to post security.

I'd like to hear from plaintiff regarding the amount in the event this Court grants its request for a preliminary injunction.

In order to give you some focus, I believe $50,000 would be more than adequate. Do you agree?

MR. LINSEY: Your Honor, we do agree.

THE COURT: Then that issue is resolved. The Court will take a brief recess.

(Recess)

THE COURT: Having reviewed the arguments advanced by each party and its respective submissions and statements to this Court, this Court finds that a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 should issue.

This Court finds both the facts and the issues presented in this hearing very similar to those underlying two cases decided by this Court last summer concerning IBT Local 745 in Dallas, Texas and IBT Local 714 in Chicago, Illinois. Both cases were affirmed by the Second Circuit just three months ago in March 1997, in IBT v. Local 645 and Local 714, 109 F.3d 846 (2d Cir. 1997). In both cases, Teamsters Locals challenged the imposition of trusteeships over their respective locals by President Carey upon recommendation of the IRB, and in both cases this Court held that "any action that challenges the ability of the IRB to

perform duties imposed upon it by the Consent Decree clearly implicates the Consent Decree." IBT v. Local 745, 938 F. Supp. 1186, 1192, (S.D.N.Y. 1996). In affirming this holding, the Second Circuit held that this Court properly exercised Consent Decree jurisdiction over a case where plaintiff challenged the "substance" of "findings" of IRB reports. IBT v. Local 704, 109 F.3d 846, 849 (2d.Cir.1997).

This Court finds that the Bastian litigations clearly challenge both the substance and the findings of IRB reports and, thus, affect the IRB's ability to perform the duties imposed upon it by the Consent Decree.

In the constructive discharge action, plaintiffs, attempt to obtain reinstatement of their local positions as well as money damages directly contravenes IRB recommendations and IBT findings that plaintiffs be sanctioned for violating Local 320 bylaws and the IBT Constitution.

Plaintiffs' defamation action similarly interferes with the IRB's authority because it challenges the substance of both IRB's recommended charges and the IBT's conduct and questions the integrity of the IRB's investigative procedure and the authority of the IBT to act upon recommendations arising from such investigative procedures.

This Court has considered each of plaintiffs' countervailing claims and finds them totally meritless. As an initial matter, the Consent Decree is not concerned solely with matters relating to organized crime. On the contrary, as the preamble to the Consent Decree specifically states its goal is to maintain the IBT's "democratically, with integrity and for the sole benefit of its members." As this Court's case law has made clear, this goal seeks the eradication of all corrupt elements of the union regardless of whether they are individual or organized, whether they concern violations of state or Federal law, or violations of internal IBT or local laws.

Moreover, plaintiffs' contention that their cases do not implicate the Consent Decree because they are based solely on actions of IBT officials and not members of the IRB is contrary to well-settled Consent Decree law. It is clear that actions taken by the IBT relating to recommendations or investigations by the IRB implicate the Consent Decree. See IBT v. local 745, 938, F. Supp. at 1191; IBT v. Local 714 and Local 745, 109 F.3d at 849. Thus, plaintiffs' claims against IBT and Local 320 officials arising out of the disciplinary actions at issue do implicate both the Consent Decree and this Court's continuing jurisdiction over it. This Court has also considered the remainder of plaintiffs' arguments and finds them similarly meritless.

Accordingly, this Court finds that the Bastian case falls within this Court's jurisdiction under both the Consent Decree and the All Writs Act; that litigation of the Bastian case in any forum other than this Court would interfere with this Court's jurisdiction and that the Bastian cases currently pending in the District of Minnesota should be enjoined and immediately transferred to this court.

This Court further finds that the amount of $50,000 is appropriate security for this action.

It is hereby ordered that the IBT's motion for preliminary injunction pursuant to Rule 65 is granted.

It is further ordered that Lawrence Bastian and Robert Weisenberger and all parties to the action Lawrence Bastian and Robert Weisenberger v. Minnesota Teamsters Public and Law Enforcement Employees Union Local 320, Howard Yates, Its Trustee, International Brotherhood of Teamsters, Its Independent Review Board; Ron Carey its President, and Central States and Southwest Area Pension and Health and Welfare Fund, Civ. 97, Civ. 1101 are enjoyed from litigating this action in any forum other than this Court.

It is further ordered that Lawrence Bastian, Robert Weisenberger and all parties to the action Lawrence Bastian

and Robert Weisenberger v. Minnesota Teamsters Public and Law Enforcement Employees Union Local 320, Howard Yates, Its Trustee; International Brotherhood of Teamsters, Civ. 97 Civ. 1289 are enjoined from litigating this action in any forum other than this court. And repeating, it is first ordered that security in the amount of $50,000 be posted by movant IBT.

It is further ordered are Cohen Weiss And Simon's request for a 20 day extension of time to answer is granted. So ordered.

MR. LINSEY: Thank you, your Honor.

(Proceeding adjourned)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	88 CIV 4486 (DNE)
Plaintiff,	
against	MOTION FOR PRELIMINARY INJUNCTION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,	and APPLICATION FOR TEMPORARY RESTRAINING ORDER
Defendants.	

Upon the declaration of James L. Linsey, dated June 11, 1997, and for the reasons stated in the Memorandum of Law filed therewith, International Brotherhood of Teamsters ("IBT") shall move this Court on June 11, 1997, or as soon thereafter as counsel may be heard, at the U.S. Courthouse, 40 Centre Street, New York, New York, for an Order, pursuant

to Rule 65 of the Federal Rules of Civil Procedure, enjoining all parties from litigating:

1. the action known as Lawrence Bastian et ano. v. Minnesota Teamsters Public and Law Enforcement Employee's Union Local 320, et al., Civ. No. 97-CV-1101 (JRT/RLE) (D.Minn), in any court or forum other than this Court; or

2. the action known as Lawrence Bastian et ano. v. Minnesota Public and Law Enforcement Employee's Union Local 320, et al., Civ. No. 97-CV-1289 (PAM/JGL) (D.Minn), in any court or forum other than this Court.

Dated: New York, New York
June 11, 1997

/s/

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
Plaintiff,	:	88 CIV 4486 (DNE)
- against -	:	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,	:	DECLARATION OF JAMES L. LINSEY
Defendants.	:	

DECLARATION OF JAMES L. LINSEY

1. I am a member of the law firm of Cohen, Weiss and Simon, attorneys for the International Brotherhood of Teamsters ("IBT"), movant in this action to enjoin the prosecution of certain actions in the state and federal courts of Minnesota by Lawrence Bastian and Robert Weisenburger. I submit this declaration in support of movant's request for a temporary restraining order and order to show cause pursuant to Civil Rules 3(c)(4) and (6)(b) of the United States District Courts for the Southern and Eastern Districts of New York Joint Rules for General, Civil, Criminal, Admiralty and Magistrate Judge Proceedings ("Local Rules"), Rule 5 of the Individual Rules of the Honorable David N. Edelstein, the All Writs Act, 28 U.S.C. §1651 and this Court's January 17, 1990 All Writs Order and opinion, United States v. IBT, 728 F.Supp. 1032 (S.D.N.Y.), aff'd, 907 F.2d 277 (2d Cir. 1990), and do state that (1) this application has been brought immediately following the defendants, failure and refusal to

abide by the Consent Decree approved by this Court; and (2) irreparable harm to the reputation and integrity of the IBT and the Consent Decree between the IBT and the United States Government shall occur between the time the application and the time when a notice of motion could be returnable.

I sent a letter via facsimile at approximately 4:58 p.m. on May 28, 1997, to counsel for plaintiffs, David A. Singer of the Law Offices of David A. Singer, demanding that he immediately dismiss the action known as Lawrence Bastian and Robert Weisenburger v. Minnesota Public and Law Enforcement Employees' Union, Local 320, Harold Yates, Its Trustee; International Brotherhood of Teamsters, Civ. No. 97-CV-1289 (PAM/JGL) (D.Minn) (the "Defamation Action"), in accordance with Rule 11 Fed.R.Civ.P., the All Writs Act, and the mandate of the Consent Decree and All Writs Injunction in United States v. International Brotherhood of Teamsters, 88 Civ. 4486, cited at 728 F.Supp. 1032 (S.D.N.Y.), aff'd 907 F.2d 277 (2d Cir. 1990) as well as United States v. International Brotherhood of Teamsters, 938 F.Supp. 1174 (S.D.N.Y. 1996); International Brotherhood of Teamsters v. Local 745 et al., 938 F.Supp. 1186 (S.D.N.Y. 1996), aff'd, 109 F.3d 846 (2d Cir. 1997). A copy of this letter is attached hereto as Exhibit A; a copy of the complaint in that action is attached hereto as Exhibit B. I likewise informed Mr. Singer that we would be proceeding before Judge Edelstein for injunctive relief and reimbursement for costs, and attorneys fees, and sanctions, if such action is required.

On May 28, 1997 Movant removed the action to the United States District Court for the District of Minnesota. A copy of the Notice of Removal is attached hereto as Exhibit C.

In response to my May 28, 1997 letter, Mr. Singer sent me a letter via facsimile on May 29 stating that while he treated the substance of my letter seriously, he would not be in

a position to respond to my letter within the next twenty-four hours due to other priorities. Thereafter, on May 31, Mr. Singer sent me a letter via facsimile in which he stated that he had prepared an amended complaint in the action.

On June 4, I received a letter via facsimile from Mr. Singer in which he refused to dismiss the lawsuit or to remove the lawsuit to this Court. A copy of this letter is attached hereto as Exhibit D. I also received, for the first time, a copy of the summons and complaint in Lawrence Bastian and Robert Weisenburger v. Minnesota Teamsters Public and Law Enforcement Employee's Union Local 320, Harold Yates, Its Trustee, International Brotherhood of Teamsters, Its Independent Review Board; Ronald Carey, Its President, and Central States Southeast and Southwest Area Pension and Health & Welfare Fund, Civ. No. 97-CV-1101 (JRT/RLE) (D.Minn) (the "Constructive Discharge Action"). A copy of the complaint in that action is attached hereto as Exhibit E.[1]

By letter, sent via facsimile on June 5, 1997, I informed Mr. Singer that both cases filed by plaintiffs clearly implicate the Consent Decree, citing this Court's decision in In re Government's Application to Enjoin Plaintiffs in Erbacci, et al., 911 F.Supp. 743 (S.D.N.Y.), aff'd, 96 F.3d 654 (2d Cir. 1996). I also informed Mr. Singer that injunction proceedings before Judge Edelstein are necessary and requested the name and address of his counsel in New York to serve papers and provide notice of any proceedings. A copy of my June 5 letter is attached hereto as Exhibit G.

Mr. Singer did not respond at all to my June 5 letter until yesterday after 4:00 p.m. when he left a message on my partner Richard Seltzer's voice-mail system and then left one on mine. In the first message plaintiffs, counsel indicated that

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[1] On May 30, 1997, plaintiffs Bastian and Weisenburger, prepared an amended complaint in the Defamation Action. A copy of that amended complaint is attached hereto as Exhibit F.

he. was hopeful that this motion would not be filed today and was willing to discuss a voluntary stipulated transfer of the Constructive Discharge Action to New York. In the message to me at approximately 6:10 p.m., Mr. Singer stated that while he was authorized to propose a stipulated transfer of the Constructive Discharge Action to the New York court if the IBT would delay filing this motion until he was able to conclude arrangements with New York counsel which would require three days, he intended to promptly move in federal court in Minnesota to remand the Defamation Action to Minnesota state court. Plaintiffs' counsel indicated that he was unwilling to agree to the transfer of the Defamation Action.

By letter faxed to me this morning, Mr. Singer confirmed his intent to proceed immediately in Minnesota Federal District Court to remand the Defamation Action to Minnesota State Court. Mr. Singer also faxed to me his letter to the two federal district judges in Minnesota to whom these cases are presently assigned and also attached a copy of plaintiffs, June 10, 1997 Notice of Motion to Remand. Copies of these documents are attached hereto as Exhibit H.

2. Movant seeks a temporary restraining order and preliminary injunction to enjoin all parties from prosecuting either the Constructive Discharge Action or the Defamation Action in any court or forum other than this Court.

3. If the temporary restraining order is not entered immediately, the authority of the Independent Review Board ("IRB"), the body appointed by this Court to investigate corruption and serious wrongdoing within the IBT, will be thwarted. Moreover, this Court's exclusive jurisdiction over matters relating to the Consent Decree will be undermined.

4. Movant's motion for Preliminary Injunction is not expected to require an evidentiary hearing. Movant intends to submit its Motion for Preliminary Injunction on the pleadings and papers filed in the case. I do not expect that the hearing

of the Movant's case on the Motion for a Preliminary Injunction will take more than two hours of court time. Movant has not previously sought the relief it is seeking herein.

5. Attached as Exhibit I to this declaration is a copy of the Consent Decree entered in this action.

6. Attached as Exhibit J to this declaration is a copy of the Independent Review Board's Trusteeship Recommendation Concerning Local 320 Minneapolis, Minnesota dated May 4, 1995.

7. Attached as Exhibit K is the Notice to the Officers and Members of Local Union 320 issued by IBT General President Ron Carey on May 2, 1995 imposing an emergency trusteeship over the affairs of Local 320 effective May 3, 1995.

8. Attached as Exhibit L to this declaration is the June 16, 1995 Notice to officers and Members of Local 320 of a hearing to determine whether to continue or dissolve the trusteeship previously imposed.

9. Attached as Exhibit M to this declaration is General President Carey's June 16, 1995 letter appointing a hearing panel to recommend whether to continue or dissolve the trusteeship.

10. Attached as Exhibit N to this declaration is General President Carey's September 13, 1995 Notice to the Officers and Members of Local 320 determining to continue the trusteeship over Local 320's affairs.

11. Attached as Exhibit O to this declaration is the Independent Review Board's May 9, 1995 report proposing that the IBT bring charges against Local 320's former officers under the IBT Constitution.

12. Attached as Exhibit P to this Declaration is General President Carey's March 6, 1996 decision affirming the decision of a hearing panel sustaining charges brought by

Local 320 against its former officers pursuant to the Independent Review Board's May 9, 1995 report.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
June 11, 1997.

/s/
James L. Linsey

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Lawrence Bastian, Robert Weisenburger,
Plaintiffs

COMPLAINT
P.I. Defamation
File No.

vs.

Minnesota Public and Law Enforcement Employees Union, Local 320; Harold Yates, Its Trustee; International Brotherhood of Teamsters,
Defendants

Plaintiffs for their complaint herein, state and allege as follows:

I.

Plaintiffs are residents of the State of Minnesota. They were each employed as business agents for Defendant Minnesota Public and Law Enforcement Employees Union, Local 320 (hereafter called "320"), and served continuously as officers of 320 until May 3, 1995. Plaintiff Weisenburger was the President, and Plaintiff Bastian was the Vice President of 320.

II.

Defendant "320" is a labor union organized and authorized to conduct its business affairs in the State of Minnesota, with its principal offices in Hennepin County Minnesota. At all times

material herein, the Secretary Treasurer of 320 exercised primary or exclusive decision making authority in conducting the financial affairs of 320, as it relates to the matters alleged hereinafter.

Defendant International Brotherhood of Teamsters (hereafter called "International") is a labor union organized and authorized to conduct its business affairs in the State of Minnesota and the United States of America, with its principal offices in Washington, D.C.

III.

Defendant Harold Yates is a resident of the State of Minnesota, residing in Washington County. Yates served as Trustee of 320, by appointment of the International, commencing on May 3, 1997, and continuing at all times material herein.

IV.

On or about April 11, 1994, the International, through its President Ronald Carey, initiated a review of the business operations of 320 under the auspices of the Independent Review Board, an agency of the International.

V.

On or about May 3, 1995, the International, through its President Ronald Carey, placed 320 into a receivership status under the authority of the constitution and by laws of the International. This action was initiated by the International on the basis of alleged financial irregularities of 320 which were in fact, a pretext to remove and replace the officers of 320. On or about said date, the Plaintiffs herein resigned their

positions as officers of 320, in order that the ongoing business affairs of 320 would not be impaired or adversely affected by the pendency of unsubstantiated charges that related to their exercise of fiduciary duties; and to protect their reputations from the impact of the false and unsubstantiated charges.

VI.

On or about May 9, 1995, the International, by and through its Independent Review Board, published "proposed charges" against the plaintiffs herein, and other officers of 320; by dissemination of such charges to Yates as Trustee of 320. Thereafter, Yates, acting on behalf of 320, under the authority of his position as Trustee; initiated published charges against the Plaintiffs herein which evolved from the proposed charges published by the International.

VII.

The charges referred to in Paragraph VI. hereinabove, alleged that the Plaintiffs "embezzled Local funds" and "breached their fiduciary duties" as officers of 320. The charges were brought in reckless disregard of the truth, with improper motive constituting malice, with intent to harm the character and reputation of the Plaintiffs, and beyond the scope of any qualified privilege.

VIII.

The charges brought against the Plaintiffs involving alleged intentional embezzlement and breach of fiduciary duty are defamatory per se, and have a meaning that directly damage the reputation and good character of the Plaintiffs. Said charges are false, and do not have an objective factual basis

indicating intentional wrongdoing of conduct designed to defraud 320 of its financial resources.

IX.

The charges include false allegations that Plaintiffs had the opportunity to convert leased automobiles to their own use to the detriment of 320. In fact, these Plaintiffs duties as business agents required them to accumulate excessively high mileage on their leased vehicles, which was taken into account by the Secretary Treasurer in entering into lease terms, and the determination of buyout values for their respective vehicles.

The buyout prices for Plaintiffs vehicles were in fact related to Lessee Book Value for high mileage leased vehicles. This is a commercially recognized methodology in the automobile leasing business for valuing vehicles at the termination of the term of a lease; which has been acknowledged and approved by all annual accounting audits of the financial operations of 320 at all times material herein. The Defendants effort to allege "embezzlement" through the use of an alternative valuation method is a pretext for the bringing of false and defamatory charges against the Plaintiffs herein.

X.

The charges also include allegations of embezzlement based on other alleged improprieties that have a reasonable business justification. Moreover, all of the charges involve decisions mandated by the Secretary-Treasurer of 320.

XI.

As a direct result of the false and unsubstantiated charges of embezzlement and breach of fiduciary duty. Plaintiffs have suffered substantial and irreparable damage to their business and professional reputations. This has resulted in the loss of employment opportunities and loss of income to them, all in an amount of not less than $50,000 each.

WHEREFORE, Plaintiffs each demand judgment against the Defendants, jointly and severally, in an amount of not less than $50,000 each, together with reimbursement of their costs and disbursements herein.

/s/_____
David A. Singer, #101473
Attorney for Plaintiffs
3033 Excelsior Blvd. #300
Minneapolis, Mn. 55416
(612) 924-2334

May 8, 1997

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. 549.21, subd. 2 to the party against whom the allegations in this pleading are asserted.

/s/_____
David A. Singer, #101473

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Lawrence Bastian, Robert Weisenburger,	)	Civ. No.
Plaintiffs,	)	Defendants' Joint Notice of Removal
vs.	)	
Minnesota Public and Law Enforcement Employees Union, Local 320; Harold Yates, Its Trustee; International Brotherhood of Teamsters;	)	
Defendants.	)	

Defendants International Brotherhood of Teamsters ("IBT"), Minnesota Public and Law Enforcement Employees Union, Local 320 ("Local 320") and Harold Yates, Its Trustee, by their undersigned counsel, pursuant to 28 U.S.C. §§1441 and 1446, the All Writs Injunction issued by United States District Court Judge David Edelstein in United States of America v. International Brotherhood of Teamsters, 88 Civ. 4486, cited at 728 F. Supp. 1032 (S.D.N.Y.), aff'd 907 F.2d 277 (2d Cir. 1990) and the All Writs Act, 29 U.S.C. §1651, hereby file this Notice of Removal of the foregoing cause of action from the District Court for the State of Minnesota, County of Hennepin, Fourth Judicial District to the United States District Court for the District of Minnesota. In support

of such removal, defendants IBT, Local 320 and Harold Yates, Its Trustee, state the following:

1. On or about May 8, 1997, an action was commenced against defendants IBT, Local 320 and Harold Yates, Its Trustee, by plaintiffs Lawrence Bastian and Robert Weisenburger. The summons and complaint were served on defendants Local 320 and on Harold Yates on May 8, 1997. The Complaint has not yet been served on defendant IBT. A true and correct copy of the summons and complaint are attached hereto as Exhibit A.

2. Defendant IBT is an unincorporated international labor organization with its principal office located at 25 Louisiana Avenue, N.W., Washington, D.C. 20001. It is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. Section 152(5) and Section 301(a) of the LMRA, 29 U.S.C. Section 185(a).

3. Defendant Local 320 is affiliated with the IBT and likewise a labor organization with its principal office located at 3001 University Avenue S.E., Minneapolis, Minnesota. It is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. Section 152(5) and Section 301(a) of the LMRA, 29 U.S.C. Section 185(a).

4. Harold Yates is the Trustee of Local 320 appointed by IBT General President Ron Carey in accordance with the IBT Constitution.

5. In their complaint, plaintiffs allege, inter alia, that defendants defamed plaintiffs by bringing charges against plaintiffs through the IBT's Independent Review Board ("IRB") alleging violation of the IBT's Constitution.

6. Although not specifically alleged by plaintiffs, the cause of action set forth in the complaint is within the original jurisdiction of this Court pursuant to 28 U.S.C. §1331, since it is a claim of breach of the IBT Constitution provisions for

filing and prosecuting charges against union officials and members. Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. §185; See, United Ass'n of Journeymen and Apprentices v. Local 334, United Ass'n of Journeymen and Apprentices, 452 U.S. 615 (1981); Pruitt v. Carpenters' Local Union NO. 225, 893 F.2d 1216, 1218-1219 (11th Cir. 1990). This lawsuit is therefore subject to removal pursuant to 29 U.S.C. 1446(b) on this basis alone, without consideration of any other issue.

7. In addition, the cause of action set forth in the complaint is within the jurisdiction of the United States District Court pursuant to the All Writs Injunction issued by United States District Court Judge David N. Edelstein in U.S. v. IBT, 88 Civ. 4486, cited at 728 F. Supp 1032 (S.D.N.Y.), aff'd 907 F.2d 277 (2d Cir. 1990), which enjoins all lawsuits which seek to litigate issues arising under the Consent Decree filed in any forum other than the United States District Court for the Southern District of New York. International Brotherhood of Teamsters, et al. v. Local 745 et al., 938 F. Supp. 1186 (S.D.N.Y. 1996), aff'd 109 F.3d 846 (2d Cir. 1997). Thus, on this alternative basis, this case is subject to removal, see, In Re Agent Orange Product Liability Litigation, 996 F.2d 1425, 1431 (2d Cir. 1993) and transfer to the U.S. District Court for the Southern District of New York. U.S. v. International Brotherhood of Teamsters, 938 F. Supp. 1174 (S.D.N.Y. 1996).

8. This Notice is filed within thirty (30) days following receipt of the initial pleading in this matter, and is therefore timely under 28 U.S.C. §1446(b).

9. Upon filing of this Notice, defendants IBT, Local 320, and Harold Yates, Its Trustee, will properly give written notice to the adverse party and will file a copy of such Notice with the Clerk of the District Court for the State of Minnesota, County of Hennepin, Fourth Judicial District.

WHEREFORE, defendants pray that this cause be removed to the United States District Court for the District of Minnesota.

Dated: May 28, 1997

Respectfully submitted,

By: _____

John W. Quarnstrom
(Minn. Bar No. 212593)
Minnesota Teamsters Public & Law Enforcement Employees' Union, Local 320
3001 University Avenue Southeast
Minneapolis, MN 55414
(612) 331-8700

Co-counsel for Minnesota Teamsters Public & Law Enforcement Employees' Union, Local 320

By: /s/ _____

James L. Linsey
COHEN, WEISS AND SIMON
330 West 42nd Street
New York, New York 10036
(212) 563-4100

By: /s/

Earl V. Brown, Jr.
General Counsel
IBT Legal Department
International Brotherhood of
Teamsters, AFL-CIO
25 Louisiana Avenue, N.W.
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By: _____

Local Counsel
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Counsel for Defendants
International Brotherhood of
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Enforcement Employees' Union, Local
320 and Harold Yates, Its Trustee

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June 4, 1997

Mr. James Linsey
Cohen, Weiss, and Simon
330 West 42nd St.
New York, New York 10036

Song Lo Fawcett
1750 North Central Life Tower
445 Minnesota St.
St. Paul, Mn. 55101

Re: Bastian, Weisenburger vs. Teamsters

Dear Counsel:

Enclosed please find a courtesy copy of letters of transmittal to the IBT with regard to the Complaint and Amended Complaint in 97-CV-1289, and the separate labor matter 97-1101.

Also enclosed and served upon the Defendants by U.S. Mail is the Amended Complaint in 97-CV-1289.

I am also responding to Mr. Linsey's letter of May 28, 1997.

It is not our view that the All Writ's Injunction is intended to preempt a state common law cause of action (97-1289) founded exclusively on the theory of defamation, which is nothing more than an after the fact action for damages. Moreover, it is our view that the removal of this cause of action is improper. By separate correspondence, you will be receiving a Notice of Motion, Motion, and Memorandum in support of a Remand of this action to state court.

My review of the cases you have provided me indicates that Judge Edelstein will clearly apply the All Writs Injunction for actions with issues that are labor based, and directly implicate an ongoing local-parent union relationship. I will certainly consider any additional cases you may have indicating the inclination of the Court for what is, at most, a pendent claim (if it had been brought in a consolidated action).

Nor is it our view that the All Writs Injunction requires venue to be in New York for a cause of action based on labor related issues that seeks relief for damages; but does not seek to interfere with the establishment or direct operation of a Trusteeship, or to intervene in the ongoing affairs of a local, or its Trusteeship.

At the very least, we have differences of opinion as to the jurisdiction of the federal court for the defamation action, and the venue of the labor related action. I take exception to your characterization of our differences as rising to the level of Rule 11.

I any event, I would be willing to entertain further discussions regarding these issues in an effort to resolve them by agreement, if possible.

Lastly, this shall confirm my conversation of yesterday with Ms. Fawcett regarding her lawfirm's conflict of interest in this matter. As you know, members of her lawfirm undertook a representative role on behalf of my clients prior to their resignation. While I understand she was not personally involved, I believe the conflict extends to the lawfirm under these circumstances.

I agreed as a courtesy to forego resolution of this issue at this time. At the very least, I cannot accept her continuing status as counsel at such time as witness testimony begins. However, I am unwilling to consider this as a reason to agree to have either of these cases transferred to New York.

I also understand from a voice message from Mr. Linsey that in the event the Defendants seek relief regarding these issues from the New York Court, I will be given scheduling courtesies to finalize arrangements for association with local counsel, and to make any travel plans.

Thank you for your courtesies.

Very truly yours,
/s/
David A. Singer
cc: Asst. U.S. Attorney Beth Goldman
Bob Weisenburger
Larry Bastian
by fax

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Lawrence Bastian, Robert Weisenburger,
Plaintiffs

vs.

Minnesota Public and Law Enforcement Employees Union, Local 320; Harold Yates, Its Trustee; International Brotherhood of Teamsters,
Defendants

AMENDED COMPLAINT
P.I. Defamation
File No. 97-1289

JURY TRIAL DEMANDED

Plaintiffs for their complaint herein, state and allege as follows:

I.

Plaintiffs are residents of the State of Minnesota. They were each employed as business agents for Defendant Minnesota Public and Law Enforcement Employees Union, Local 320 (hereafter called "320"), and served continuously as officers of 320 until May 3, 1995. Plaintiff Weisenburger was the President, and Plaintiff Bastian was the Vice President of 320.

II.

Defendant "320" is a labor union organized and authorized to conduct its business affairs in the State of Minnesota, with its principal offices in Hennepin County Minnesota. At all times

material herein, the Secretary Treasurer of 320 exercised primary or exclusive decision making authority in conducting the financial affairs of 320, as it relates to the matters alleged hereinafter.

Defendant International Brotherhood of Teamsters (hereafter called "International") is a labor union organized and authorized to conduct its business affairs in the State of Minnesota and the United States of America, with its principal offices in Washington, D.C.

III.

Defendant Harold Yates is a resident of the State of Minnesota, residing in Washington County. Yates served as Trustee of 320, by appointment of the International, commencing on May 3, 1997, and continuing at all times material herein.

IV.

On or about April 11, 1994, the International, through its President Ronald Carey, initiated a review of the business operations of 320 under the auspices of the Independent Review Board, an agency of the International.

V.

On or about May 3, 1995, the International, through its President Ronald Carey, placed 320 into a receivership status under the authority of the constitution and by laws of the International. This action was initiated by the International on the basis of alleged financial irregularities of 320. On or about said date, the Plaintiffs herein resigned their positions as officers of 320, in order that the ongoing business affairs of

320 would not be impaired or adversely affected by the pendency of unsubstantiated charges that related to their exercise of fiduciary duties; and to protect their reputations from the impact of the false and unsubstantiated charges.

VI.

On or about May 9, 1995, the International, by and through its Independent Review Board, published "proposed charges" against the plaintiffs herein, and other officers of 320; by dissemination of such charges to Yates as Trustee of 320. Thereafter, Yates, acting on behalf of 320, under the authority of his position as Trustee; initiated published charges against the Plaintiffs herein which evolved from the proposed charges published by the International.

VII.

The charges referred to in Paragraph VI. hereinabove, alleged that the Plaintiffs "embezzled Local funds" and "breached their fiduciary duties" as officers of 320.

VIII.

The charges brought against the Plaintiffs involving alleged intentional embezzlement and breach of fiduciary duty are defamatory per se, and have a meaning that directly damage the reputation and good character of the Plaintiffs. Said charges are false, and do not have an objective factual basis indicating intentional wrongdoing of conduct designed to embezzle funds or defraud 320 of its financial resources.

IX.

The charges include false allegations that Plaintiffs had the opportunity to convert leased automobiles to their own use to the detriment of 320. In fact, these Plaintiffs duties as business agents required them to accumulate excessively high mileage on their leased vehicles. This was taken into account by the Secretary Treasurer in negotiating and entering into lease terms, and the determination of buyout prices for their respective vehicles.

The buyout prices for Plaintiffs vehicles were in fact related to Lessee Book Value for high mileage leased vehicles. This is a commercially recognized methodology in the automobile leasing business for valuing vehicles at the termination of the term of a lease; which on information and belief has been acknowledged and approved by all annual accounting audits of the financial operations of 320 at all times material herein by audits of the financial operations of 320 at all times material herein by audits conducted by both local and international auditors.

X.

The charges also include allegations of embezzlement based on other alleged improprieties that have a reasonable business justification. Moreover, all of the charges involve decisions mandated by the Secretary-Treasurer of 320, who had the sole discretion and authority to make such determination.

XI.

After internal union charges were initiated by Yates, the Defendants Local and/or International Brotherhood 320 through their spokespersons caused to be disseminated in the

Minneapolis and St. Paul news media the following defamatory statements about the Plaintiffs.

a.) May 4, 1995:
"Criminal Charges are possible"

b.) Aug 5, 1995:
"people who break the law and steal money from members of this union are aggressively prosecuted regardless of their political affiliations."

c.) March 19, 1996:
"This is a pure corruption issue"

d.) April 3, 1996:
"This is double dipping"

XII.

The statements of the Defendants, through their spokespersons, were defamatory per se, and were made with malice, and intent to harm the character and reputation of the Plaintiffs, and were made without any privilege or business necessity. In fact, criminal charges were never brought. Further, the Plaintiffs were deprived of the opportunity to clear their name by the defendants refusal to provide Plaintiffs with audit reports and other documents that would demonstrate a lack of criminal conduct by the Plaintiffs.

As a direct result of the false and unsubstantiated allegations of criminal conduct and the defamatory statements that the Plaintiffs had engaged in criminal conduct, Plaintiffs have suffered substantial and irreparable damage to their business and professional reputations. This has resulted in the loss of

employment opportunities and loss of income to them, all in an amount of not less than $50,000 each.

WHEREFORE, Plaintiffs each demand judgment against the Defendants, jointly and severally, in an amount of not less than $50,000 each, together with reimbursement of their costs and disbursements herein.

/s/
David A. Singer, #101473
Attorney for Plaintiffs
3033 Excelsior Blvd. #300
Minneapolis, MN. 55416
(612) 924-2334

May 30, 1997

JURY TRIAL DEMANDED

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. 549.21, subd. 2 to the party against whom the allegations in this pleading are asserted.

/s/
David A. Singer, #101473

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Lawrence Bastian and
Robert Weisenburger,

Plaintiffs

vs.

COMPLAINT

Minnesota Teamsters Public and Law Enforcement Employee's Union Local 320, Harold Yates, Its Trustee, International Brotherhood of Teamsters, Its Independent Review Board, Ronald Carey, Its President, and Central States Southeast and Southwest Area Pension and Health & Welfare Fund

Defendants

Plaintiffs, for their complaint herein, state and allege as follows:

JURISDICTION AND PARTIES

1. Plaintiff Lawrence Bastian and Robert Weisenburger are residents of Ramsey County in the State of Minnesota.

2. Defendant Minnesota Teamsters Public and Law Enforcement Employee's Union Local 320 (hereafter called 320) is a labor organization organized and authorized to conduct its business in accordance with the provisions of the

laws of the State of Minnesota and the United States of America, with its principal offices in Hennepin County Minnesota.

3. Defendant International Brotherhood of Teamsters (hereafter called International) is a labor organization organized under the laws of the United States of America, with its principal offices in Washington D.C. Defendant Independent Review Board (hereafter called Board) is an agency of the International created in accordance with the provisions of a certain Consent Order issued in United states District Court, Southern District New York on March 14, 1989.

4. Defendant Ronald Carey (hereinafter called Carey) is the duly elected President of the International at all times material herein. Defendant Harold Yates (hereinafter called Yates) is the duly appointed Trustee of 320 at all times material herein on and subsequent to May 3, 1995.

5. Defendant Central States southeast and Southwest Area Pension and Health and Welfare Fund (hereinafter called Fund) is a fiduciary organization with its principal offices located in the State of Illinois, which conducts its business affairs in the State of Minnesota. Its business relates to the administration of various pension, health and welfare plans for the benefit of various members of Teamster organizations.

6. Jurisdiction of this Court is conferred by 28 U.S.C. 1331 as a case involving federal question jurisdiction arising out of or relating to 29 U.S.C.411, et. seq., the Bill of Rights of members of labor organizations.

FACTUAL ALLEGATIONS

7. Plaintiff Weisenburger was the duly elected President of 320 from 1971 through May 3, 1995. Plaintiff Bastian was the, duly elected Vice President of 320 from 1971 through May 3, 1995.

8. At various times between April 11, 1994 and May 3, 1995, the "International" by and through its President "Carey" and/or the "Board" initiated an investigation into the financial affairs of 320; and the conduct of its various officers, including but not limited to the Plaintiffs herein regarding the management of the financial affairs of "320", through their exercise of the responsibilities of their fiduciary positions. Such allegations included false charges of embezzlement and other conduct that adversely impacted upon their professional stature and ability to continue to serve as union agents and officials.

9. On or about May 3, 1995, the conduct of the various defendants herein, culminated in the constructive discharge of the Plaintiffs by virtue of their respective forced resignations from "320", based on false promises or the creation of false expectations that their respective resignations would bring an end to pending allegations, investigations, and threats of internal administrative, civil or criminal charges against the plaintiffs, among others.

At said time "Yates" took various actions to modify the compensation benefits of officers and agents of "320", including but not limited to the termination of post retirement health insurance premium benefits.

10. In consequence of the constructive discharge of the Plaintiffs, they have suffered a loss of employment income,

and other compensation benefits including but not limited to accrued vacation, severance, pension or retirement, and/or health and other insurance as are authorized and afforded to all officers, employees, and agents of "320", all in an amount to be proven at trial of not less than $50,000.

11. Notwithstanding the promises and understandings regarding the future status of allegations and investigations about the plaintiffs herein, charges were brought against the plaintiffs on or about May 9, 1995. Said charges culminated in a finding of wrongdoing by the plaintiffs, which are false.

In fact, all alleged financial improprieties by the officers of "320" including the plaintiffs herein, were acts based on business practices that were reviewed authorized, ratified, and approved by the auditors for "320" and the "International" in the course of their routine periodic audits of the financial transactions and business affairs of "320".

12. The plaintiffs sought to appeal the findings through available remedies provided by the Constitution and By-laws of the "International" and "320", and as guaranteed by the Bill of Rights of Members of Labor Organizations, 29 U.S.C. 411, et. seq.

13. The defendants have failed and refused to comply with or provide plaintiffs requested right to guaranteed Due Process regarding the appeal of charges brought against them, all in contravention of their rights as alleged in paragraph 12 hereinbefore.

14. The plaintiffs loss of pension rights and payment of post termination health insurance premiums and other post termination benefits are protected by the provisions of ERISA, 29 U.S.C. 1001, et. seq.

15. The actions of "Yates" and in collaboration with "Carey" constitutes a violation of their fiduciary duties owed to the plaintiffs under ERISA, 29 U.S.C. 1101, et. seq., and 29 U.S.C. 1104. Such actions are arbitrary, unreasonable, and beyond all lawful and necessary discretion afforded to "Yates" and "Carey" in the exercise of their fiduciary obligations.

16. By virtue of the foregoing violation of ERISA provisions, plaintiffs are entitled to all damages alleged hereinbefore, together with a recovery of all attorney fees and costs incurred in the prosecution of this cause of action.

17. At all times material herein, "320" and "Yates" wrongfully and unlawfully provided selected individuals associated with "320" the opportunity to participate in the "Fund" and receive more favorable benefits than those available to plaintiffs herein. Officials of the "Fund" had actual or constructive knowledge that participants associated with "320" were selected or designated in an arbitrary and selective manner, all in violation of the provisions of ERISA, 29 U.S.C. 1001, et. seq. Plaintiffs were denied such favorable benefits, including payment of post termination health insurance premiums.

WHEREFORE, plaintiffs pray for judgement jointly and severally against the defendants herein in an amount of not lees than $50,000, together with their costs, disbursements, and attorney fees, and injunctive relief to provide that plaintiffs be made whole for their losses and restored their full rights with "320".

/s/

David A. Singer, #101473
Attorney for plaintiffs
3033 Excelsior Blvd. #300
Minneapolis, Mn. 55416
(612)924-2334

JURY TRIAL DEMANDED

May 2, 1997

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Lawrence Bastian,
Robert Weisenburger
Plaintiffs

NOTICE OF MOTION
MOTION TO REMAND

vs.

Minnesota Public and Law Enforcement Employees Union, Local 320, Harold Yates, Its Trustee, International Brotherhood of Teamsters
Defendants

To the above named Defendants, and their attorneys, Andrew Birrell, 2450 Park Ave., Mpls., Mn. 55404, and James Linsey 330 West 42nd St., New York, New York 10036:

PLEASE TAKE NOTICE That the Plaintiffs will move the Court, Honorable Chief Judge Paul Magnuson on the ___day of ___, 1997, at ___in the ___, at the United States District Court Courthouse, 300 South Fourth St., Suite 202, Minneapolis, Mn. 55414 for an Order remanding the above entitled matter to State Court on the grounds that the Removal of this action was improper, and not in accordance with the provisions of 28 U.S.C. 1447.

/s/

DAVID A. SINGER, #101473
3033 Excelsior Blvd. #300
Minneapolis, Mn. 55416
(612) 924-2334

June 10, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Plaintiff, - v - INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al., Defendants.	:	ORDER 88 CIV. 4486 (DNE)

WHEREAS, plaintiff United States of America commenced this action on June 28, 1988, by filing a Complaint seeking equitable relief involving the International Brotherhood of Teamsters, AFL-CIO (hereinafter, "the IBT"), pursuant to the civil remedies provisions of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. 1964; and

WHEREAS, the Summons and Complaint have been served, answers filed, and pretrial discovery commenced by and between the parties; and

WHEREAS, plaintiff United States of America and defendants IBT and its General Executive Board, William J. McCarthy, Weldon Mathis, Joseph Trerotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Dan L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis

(hereinafter, the "union defendants") have consented to entry of this order; and

WHEREAS, the union defendants acknowledge that there have been allegations, sworn testimony and judicial findings of past problems with La Cosa Nostra corruption of various elements of the IBT; and

WHEREAS, the union defendants agree that there should be no criminal element or La Cosa Nostra corruption of any part of the IBT; and

WHEREAS, the union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence:

IT IS HEREBY ORDERED AND DECREED That:

A. COURT JURISDICTION

1. This Court has jurisdiction over the subject matter of the action, has personal jurisdiction over the parties, and shall retain jurisdiction over this case until further order of the Court.

2. Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment dismissing this action with prejudice and without costs to either party.

11. As used herein, the term, "knowingly associating," shall have the same meaning as that ascribed to that term in the context of comparable federal proceedings or federal rules and regulations.

F. COURT-APPOINTED OFFICERS

12. The Court shall appoint three (3) officers -- an Independent Administrator, an Investigations Officer and an Election Officer -- to be identified and proposed by the Government and the union defendants to oversee certain operations of the IBT as described herein. The parties shall jointly propose to the Court at least two persons for each of these three positions. Such proposal shall be presented to the Court within four weeks of the date of the entry of this order, except that for good cause shown such period may be extended by the Court. Except as otherwise provided herein, the duties of those three officers shall be the following:

(A) DISCIPLINARY AUTHORITY -- From the date of the Administrator's appointment until the termination of the Administrator's authority as set forth in paragraph 3(3) herein, the Administrator shall have the same rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution (including Articles VI and XIX thereof) and Title 29 of the United States Code to discharge those duties which relate to: disciplining corrupt or dishonest officers, agents, employees or members of the IBT or any of its affiliated entities (such as IBT Locals, Joint Councils and Area Conferences), and appointing temporary trustees to run the affairs of any such affiliated entities. The Investigations officer shall have the authority to investigate the operation of the IBT or any of its affiliates and, with cause,

(i) To initiate disciplinary charges against any officer, member or employee of the IBT or any of its

affiliates in the manner specified for members under the IBT Constitution and,

(ii) To institute trusteeship proceedings for the purpose and in the manner specified in the IBT Constitution.

Prior to instituting any trusteeship proceeding the Investigations Officer shall notify the General President of the Investigations Officer's plan to institute said trusteeship proceeding and the basis therefor and give the General President ten (10) days to exercise his authority pursuant to the IBT Constitution to institute such trusteeship proceedings. If the General President timely institutes such proceedings and/or a trusteeship is imposed, the Investigations officer and the Administrator shall have authority to review any action thus taken by the General President and/or any trusteeship imposed thereafter and to modify any aspect of either of the above at any time and in any manner consistent with applicable federal law. If the General President fails to institute trusteeship proceedings within the ten-day period prescribed herein, the Investigations Officer may immediately proceed in accordance with the authority specified above.

When the Investigations Officer files charges, the following procedures shall be observed:

(a) the Investigations Officer shall serve written specific charges upon the person charged;

(b) the person charged shall have at least thirty (30) days prior to hearing to prepare his or her defense;

(c) a fair and impartial hearing shall be conducted before the Administrator;

(d) the person charged may be represented by an IBT member at the hearing; and

(e) the hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

The Administrator shall preside at hearings in such cases and decide such cases using a "just cause" standard. The Investigations Officer shall present evidence at such hearings. As to decisions of the IBT General Executive Board on disciplinary charges and trusteeship proceedings during the Administrator's tenure, the Administrator shall review all such decisions, with the right to affirm, modify or reverse such decisions and, with respect to trusteeship proceedings, to exercise the authority granted above in this paragraph. Any decision of the Administrator shall be final and binding, subject to the Court's review as provided herein. For a period of up to fourteen (14) days after the Administrator's decision, any person charged or entity placed in trusteeship adversely affected by the decision shall have the right to seek review by this Court of the Administrator's decision. The Administrator shall also have the right to establish and disseminate new guidelines for investigation and discipline of corruption within the IBT. All of the above actions of the Administrator and Investigations officer shall be in compliance with applicable Federal laws and regulations.

(B) REVIEW AUTHORITY -- From the date of the Administrator's appointment until the certification of the IBT elections to be conducted in 1991, the Administrator shall have the authority to veto whenever the Administrator reasonably believes that any of the actions or proposed actions listed below constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. §1961, or furthers or contributes to the association directly, or indirectly, of the IBT or any of its members with the LCN or elements thereof:

> (i) any expenditures or proposed expenditure of International Union funds or transfer of International Union property approved by any officers, agents, representatives or employees of the IBT,

To: Ron Carey, General President

From: Members of the Independent Review Board

Subject: Trusteeship Recommendation Concerning Local 320 Minneapolis, Minnesota

Date: May 4, 1995

I. INTRODUCTION

An investigation of IBT Local 320 located in Minneapolis, Minnesota has been conducted. The investigation revealed that the Local is in a precarious financial condition and has engaged in a variety of practices designed for the personal benefit of the Local's four full time officers. For example, the Local's Secretary Treasurer, David Morris, arranged for the sale of twenty seven cars the Local leased to the Local's officers, relatives and friends for less than the fair market value of the cars. As a result of this practice, as discussed below, the Local failed to receive between $45,000.00 and $97,000.00 in credits from the leasing company. In addition between 1990 and 1994 the Local spent over $7,800.00 to purchase magazines unrelated to union business for the Local's officers and staff. Moreover, the Local paid for a massage therapist to come to the Local's office once a month to provide massage therapy for the Local's officers and staff. As discussed below, after meetings with the IRB's Chief Investigator in which these practices were challenged the Local took steps to correct some of these practices. However, given the Local's pattern of conduct, it is recommended that the General President place Local 320 in trusteeship.

II. BACKGROUND

Local 320 has approximately 8,500-9,000 members and represents municipal workers within the state of Minnesota. (Ex. 1 at 23) This is a public service local and as such, does not file LM-2 reports with the Department of Labor. Thus, until the recent International instruction for public service locals, the members did not know the salaries or reimbursed expenses of the officers. Since the Local was chartered in 1971 the Local has not had a contested election for officers except for one election where one Trustee position was contested. (Ex. 1 at 11-12)

David Y. Morris ("Morris") has been the Secretary Treasurer and principal officer of the Local since approximately 1972. (Ex. 2 at 4) In 1993, Morris' gross annual salary from the Local was $68,430. (Ex. 3) Morris was also the Director of the Public Employee Division of the Central Conference of Teamsters ("CCT"). (Ex. 4) In 1993, his gross annual CCT salary was $27,707. (Ex. 4) Morris was also the Secretary Treasurer of Joint Council 32 ("JC 32"). In 1993 his gross annual JC 32 salary was $19,200. (Ex. 5) Morris' total IBT salaries in 1993 were approximately $115,337. In 1993, Morris' wife, Joan, was a part-time Local 320 employee at a salary of approximately $10,186 and his son, Joseph, was a Local business agent at a salary of $41,400. (Ex. 2 at 5; Ex. 19)[1]

Jack Mogelson has been the Recording Secretary since 1971. (Ex. 6 at 6) In 1993, Mogelson's gross annual Local 320 salary was $63,130. (Ex. 7) Mogelson was also the Director of DRIVE for, the CCT. (Ex. 4) In 1993, his gross annual CCT salary was $12,058. (Ex. 4) Mogelson was also on the staff of JC 32 and his gross 1993 annual JC 32 salary

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[1] As discussed below, subsequent to the Chief Investigator's meeting with counsel for Local 320, Joan Morris resigned from the Local.

was $12,994. (Ex. 5) In 1993 Mogelson's total IBT salaries were $88,182.

Robert Weisenburger has been the Local's President since 1971. (Ex. 1 at 7) Weisenburger's 1993 gross annual salary was $63,130. (Ex. 8) Lawrence Bastian ("Bastian") has been the Vice-President since 1971. (Ex. 9 at 4) In 1993, Bastian's annual salary was $63,130. (Ex. 10) Morris, Weisenburger, Mogelson and Bastian are the only full-time salaried officers of the Local Union. (Ex. 1 at 35) The three Local Trustees, Joan Johnson, Matthew O'Brien and Richard Flemmons, work for employers under collective bargaining agreements with the Local.

The Local currently employs six full-time business agents. The name, date of hire and 1993 salary for the six fulltime business agents are as follows: Francis Dick, January 1, 1973, $41,400; June Del Castillo, January 4, 1980, $46,965; Joseph Morris, January 18, 1987, $41,400; Lowell Lynch, February 22, 1988, $38,750; Shirley Cunning, March 1, 1989, $37,425; Susan Mauren, June 1, 1990, $36,100. (Ex. 11)

Since at least 1989, the Local's financial condition has deteriorated. The Local took in over two million dollars from members each year for the years 1989 through 1994. The Local does not have any savings or investments. In fact, between 1989 and 1994 the Local borrowed over $350,000 to meet its operating expenses.[2] Despite the Local's declining finances, in violation of the Local 320 Bylaws, the Local's four full-time salaried officers were paid in addition to their salaries between $300 and $425 each month for attending Executive Board meetings.[3] The total amount paid to the four

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[2] During this period, as discussed below, Local 320 spent approximately $55,000 for tickets to sporting events.

[3] Pursuant to Section 14(E) of the Local 320 Bylaws:

full-time officers in violation of the Bylaws between 1989 and 1994 was $107,900.

Furthermore, since at least 1989 the Local engaged in a pattern of arranging for the sale of cars leased by the Local to the Local's officers, or their relatives and friends for less than the fair market value of the vehicles as determined by the National Automobile Dealers Association. As a result of this practice, the Local was deprived of between $45,911 and $97,461 which, as discussed below, would have been credited to the Local by the leasing company had the leased cars been sold for the fair market value.

Moreover, in several ways Local funds were used for the personal benefit of the Local's officers and employees. For example, the Local paid for a reflexologist to come to the Local's offices to provide massage therapy for the officers and employees. In addition, the Local paid for magazines unrelated to union business such as Sports Illustrated and Men's Health to be sent to the homes of the Local's officers and staff. The Local also paid for a membership in the National Rifle Association for Secretary Treasurer Morris.

In April 1994, the Local's books and records were examined by members of the Chief Investigator's staff. Sworn examinations of the Local's officers and staff were conducted in November 1994. On or about December 16, 1994, the Chief Investigator met with Stephen Gordon, counsel for the Local. Subsequent to this meeting, the Local ended some of the improper practices identified by the Chief Investigator. For example, the Local no longer pays the full-

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By action of the Local Union Executive Board, members of the Board who are not full-time paid officers or employees of the organization may be paid their expenses, including wages lost, if any, for attendance at each meeting of the Board.

(Ex. 12)

time salaried Executive Board members for attending Executive Board meetings. According to the Local's attorney, the Local will no longer arrange for the leased cars to be sold to officers, friends and family. Instead, the leased cars will be returned to the leasing company for auction. In addition, the Local terminated the services of the reflexologist and stopped paying for magazines to be sent to the officers' homes.

Pursuant to Article VI, Section 5 (a) of the IBT Constitution,

> If the General President has or receives information which leads him to believe that any of the officers of the local union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such manner as to jeopardize the interests of the International Union or its subordinate body, or if the general president believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of, or interferes with the performance of obligations of other members or local unions under collective bargaining agreements or otherwise carrying legitimate objectives of the subordinate body, he may appoint a temporary trustee to take charge and control of the affairs of such local union.

Although the Local terminated some of the improper practices after the Chief Investigator identified them, based

upon the Local's officers' history of financial malpractice and the pattern of using the Local's funds for their benefit, it is recommended that the General President impose a Trusteeship on the Local.

III. INVESTIGATIVE FINDINGS

A. The Local's Precarious Financial Condition

Between the years 1989 and 1994, Local 320 took in a total of over two million dollars each year from members. During these same years the Local had no money in any savings accounts or

To: Harold Yates, Trustee of Local 320

From: Members of the Independent Review Board

Subject: Proposed Charges Against Local 320 Officers David Morris, Jack Mogelson, Lawrence Bastian and Robert Weisenburger

Date: May 9, 1995

I. INTRODUCTION

An investigation of IBT Local 320 located in Minneapolis, Minnesota has been conducted. The investigation revealed that the Local's four full time officers breached their fiduciary duties to the members, embezzled Local funds and violated the Local's Bylaws. The Local's Secretary Treasurer, David Morris, arranged for the sale of twenty cars the Local leased to the Local's officers, relatives and friends for less than the fair market value of the cars. As a result of this practice, as discussed below, between 1989 and 1994 Morris deprived the Local of between $51,943.00 and $98,473.00 in credits from the car leasing company. Moreover, Lawrence Bastian, Jack Mogelson and Robert Weisenburger, the other full-time officers, also embezzled Local funds by purchasing Local leased vehicles for less than the fair market value, thereby depriving the Local of funds while personally benefiting from these purchases.

In addition, between 1990 and 1994 the Local's four fulltime officers also embezzled Local funds by causing the Local to pay for magazines unrelated to union business, such as Sports Illustrated and Men's Health to be delivered to their homes. During those years, the Local paid approximately $1,287 for magazines to be delivered to Morris' home; $2,147

for magazines delivered to Mogelson's home; $923 for magazines delivered to Bastian's home; and $1,240 for magazines delivered to Weisenburger's home.

Moreover, in violation of the Local 320 Bylaws, the Local's four full-time salaried officers were paid in addition to their salaries between $300 and $425 each month for attending Executive Board meetings.[1] The total amount paid to the four fulltime officers in violation of the Bylaws between 1989 and 1994 was $107,900.

As a result, it is recommended that David Morris be charged with bringing reproach upon the IBT, breaching his fiduciary duties and embezzling Local funds by arranging for the sale of twenty Local leased cars for less than the fair market value thereby benefiting the Local's officers at Local expense and by causing the Local to pay for magazine subscriptions unrelated to union business to be delivered to his home. It is also recommended that Jack Mogelson, Lawrence Bastian and Robert Weisenburger, each be charged with bringing reproach upon the IBT, breaching their fiduciary duties and embezzling Local funds by purchasing Local leased cars for less than the fair market value thereby benefiting themselves and their relatives at Local expense and by causing the Local to pay for magazine subscriptions unrelated to union business to be delivered to their homes. In addition, it is recommended that the four full-time officers be charged with breaching their fiduciary duties and violating the

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[1] Pursuant to Section 14(E) of the Local 320 Bylaws:

> By action of the Local Union Executive Board, members of the Board who are not full-time paid officers or employees of the organization may be paid their expenses, including wages lost, if any, for attendance at each meeting of the Board.

(Ex. 12)

Local's Bylaws by receiving payments in addition to their salaries for attending Executive Board meetings.

II. BACKGROUND

Local 320 has approximately 8,500-9,000 members and represents municipal workers within the state of Minnesota. (Ex. 1 at 23) This is a public service local and as such, does not file LM-2 reports with the Department of Labor. Thus, until the recent International instruction for public service locals, the members did not know the salaries or reimbursed expenses of the officers. Since the Local was chartered in 1971 the Local has not had a contested election for officers except for one election where one Trustee position was contested. (Ex. 1 at 11-12)

David Y. Morris ("Morris") was the Secretary Treasurer and principal officer of the Local from approximately 1972 until May 3, 1995 when he resigned after the International imposed a trusteeship on Local 320. (Ex. 2 at 4; Ex. 79) In 1993, Morris' gross annual salary from the Local was $68,430. (Ex. 3) Morris was also the Director of the Public Employee Division of the Central Conference of Teamsters ("CCT"). (Ex. 4) In 1993, his gross annual CCT salary was $27,707. (Ex. 4) Morris was also the secretary Treasurer of Joint Council 32 ("JC 32"). In 1993 his gross annual JC 32 salary was $19,200. (Ex. 5) Morris' total IBT salaries in 1993 were approximately $115,337. In 1993, Morris, wife, Joan, was a part-time Local 320 employee at a salary of approximately $10,186 and his son, Joseph, was a Local business agent at a salary of $41,400. (Ex. 2 at 5; Exs. 11 and 181)[2]

Jack Mogelson was the Recording Secretary from 1971 until May 3, 1995 when Local 320 was placed in trusteeship.

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[2] Subsequent to the Chief Investigator's meeting with counsel for Local 320, Joan Morris resigned from the Local.

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(Ex. 6 at 6; Ex. 112) In 1993, Mogelson's gross annual Local 320 salary was $63,130. (Ex. 7) Mogelson was also the Director of DRIVE for the CCT. (Ex. 4) In 1993, his gross annual CCT salary was $12,058. (Ex. 4) Mogelson was also on the staff of JC 32 and his gross 1993 annual JC 32 salary was $12,994. (Ex. 5) In 1993 Mogelson's total IBT salaries were $88,182.

Robert Weisenburger was the Local's President between 1971 and May 3, 1995 when he resigned as a result of the IBT's trusteeship in Local 320. (Ex. 1 at 7; Ex. 121) Weisenburger's 1993 gross annual salary was $63,130. (Ex. 8) Lawrence Bastian ("Bastian") was the Vice-President from 1971 until May 3, 1995. (Ex. 9 at 4; Ex. 122) In 1993, Bastian's annual salary was $63,130. (Ex. 10) Morris, Weisenburger, Mogelson and Bastian were the only full-time salaried officers of the Local Union. (Ex. 1 at 35) The three Local Trustees, Joan Johnson, Matthew O'Brien and Richard Flemmons, worked for employers under collective bargaining agreements with the Local.

The Local currently employs six full-time business agents. The name, date of hire and 1993 salary for the six full-time business agents are as follows: Francis Dick, January 1, 1973, $41,400; June Del Castillo, January 4, 1980, $46,965; Joseph Morris, January 18, 1987, $41,400; Lowell Lynch, February 22, 1988, $38,750; Shirley cunning, March 1, 1989, $37,425; Susan Mauren, June 1, 1990, $36,100. (Ex. 11)

Since at least 1989, the Local's financial condition has deteriorated. The Local took in over two million dollars from members each year for the years 1989 through 1994. As of November 1994, the Local did not have any savings or investments. In fact, between 1989 and 1994 the Local

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borrowed over $350,000 to meet its operating expenses.[3] Despite the Local's declining finances, as detailed below, in violation of the Local 320 Bylaws, the Local's four full-time salaried officers were paid in addition to their salaries between $300 and $425 each month for attending Executive Board meetings. The total amount paid to the four full-time officers in violation of the Bylaws between 1989 and 1994 was $107,900.

Furthermore, since at least 1989 Morris engaged in a pattern of arranging for the sale of twenty cars leased by the Local to the Local's officers, or their relatives and friends for less than the fair market value of the vehicles as determined by the National Automobile Dealers Association. As a result of this practice Morris deprived the Local of between $51,943 and $98,473 which, as discussed below, would have been credited to the Local by the leasing company had the twenty leased cars been sold for the fair market value.

In addition, Bastian, Weisenburger and Mogelson each embezzled Local funds by purchasing cars for less than the fair market value thereby depriving Local 320 of funds. By purchasing four cars for less than the fair market value in the period from 1989 through 1994, Bastian deprived the Local of between $13,620 and $21,020. Weisenburger purchased two cars for less than the fair market value thereby depriving Local 320 of between $7,867 and $12,867. Mogelson purchased one vehicle for less than the fair market value thereby depriving the Local of between $2,273 and $3,898. Moreover, the Local's four full-time officers also embezzled Local funds by causing the Local to pay for magazines unrelated to union business such as Sports Illustrated and Men's Health to be sent to their homes.

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[3] During this period, Local 320 spent approximately $46,000 for tickets to sporting events, including Vikings football games and Twins baseball games. (Exs. 128 and 134)

III. INVESTIGATIVE FINDINGS

A. Background

1. The Local's Precarious Financial Condition

Between the years 1989 and 1994, Local 320 took in a total of over two million dollars each year from members. During these same years the Local had no money in any savings accounts or

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

In The Matter Of:	:	
	:	
Article XIX Charges	:	
	:	
Against	:	DECISION
	:	
David Morris, Jack Mogelson,	:	
Lawrence Bastian, and	:	
Robert Weisenburger	:	

Having reviewed and duly considered the hearing record and the Findings and Recommendations of the Article XIX Hearing Panel in the above-referenced matter, I hereby issue the following decision on the proposed charges against David Morris, Jack Mogelson, Lawrence Bastian and Robert Weisenburger referred to me by the independent Review Board ("IRB").

The proposed charges against the four former full-time officers of Local 320 were heard before a Panel comprised of Robert Knox, Chair, W. C. Smith and William Woldman. The Panel held a hearing on the charges on September 12 and 13, 1995, in Minneapolis, Minnesota at which all parties were afforded an opportunity to present evidence and to cross-examine witnesses. After review and consideration of the evidence submitted by the parties, the Hearing Panel issued a report of its findings and recommendations. A copy of the Hearing Panel's report is appended to this decision.

The Hearing Panel found that Morris, Mogelson, Bastian and Weisenburger breached their fiduciary duties and embezzled monies from Local 320 by (1) arranging for the sale and purchase of Local 320 Leased vehicles for less than fair market value; (2) causing Local 320 to pay for magazines unrelated to union business to be delivered to their homes;

and (3) receiving payments in addition to their salaries for attending Executive Board meetings. I concur with the findings of fact set forth in the Hearing Panel's report, and I adopt them in their entirety.

The charged parties raised a number of procedural objections to the conduct of the hearing. The charged parties claimed that because they had resigned from membership, they cannot be charged and tried; that they were improperly served with the charges by UPS overnight delivery instead of certified mail; that they were denied pre-hearing discovery; and that they could not cross-examine representatives of the IRB that recommended that charges be brought against them. The Hearing Panel report analyzed and responded to all of the procedural objections and found them to be without merit. I agree.

With respect to the merits of the charges, Mogelson, Bastian and Weisenburger attempted to shift the blame at the hearing to Morris who did not attend the hearing nor defend himself against the charges.[1] Mogelson, Bastian and Weisenburger claimed that Morris made all the decisions on the sale of the leased vehicles and on the purchase of the magazine subscriptions, with a few minor exceptions.

Sale and Purchase of Local Union Vehicles

Prior to the imposition of the trusteeship, Local 320 disposed of leased cars by sale instead of returning them to the leasing company. A majority of the sales were to officers of Local 320 or their relatives and friends. Former Secretary-Treasurer Morris arranged for the sale of these vehicles, which were not advertised to the members of the Local or the

[1] Morris received proper notice of the hearing, and the charges against him were properly heard in his absence pursuant to Article XIX, Section 2(d) of the IBT Constitution.

general public. Mogelson purchased one car from Local 320, Weisenburger two cars, and Bastian four cars in this manner.

The unadvertised sale of Local 320 leased cars by Morris to officers and their friends and relatives for less than fair market value cost the Local Union between $51,943 and $93,743. Through their purchase of Local 320 vehicles for less than market value, Mogelson enriched himself between $2,273 and $3,898, Weisenburger between $7,867 and $12,867, and Bastian between $13,620 and $21,020.

The charged parties disputed the IRB's methodology of computing the fair market value of the vehicles they purchased from Local 320. The Hearing Panel found and I agree that the calculation method used by the IRB was the most reasonable under the Circumstances presented in this case. The claims of Mogelson, Bastian and Weisenburger that they did not know the value of the cars they were purchasing nor question Morris' assignment of a price to a particular vehicle were not credited by the Hearing Panel. Rather, the Panel found that Mogelson, Bastian and Weisenburger, all of whom purchased vehicles from Local 320 at below market value, "knew a good deal when they saw it."

Magazine Subscriptions

The charged parties each received numerous magazines and periodicals at their homes paid for by Local 320. The magazines and periodicals included Sports Illustrated, People, Newsweek, Reader's Digest, Men's Health, Time, Bottom Line, Prevention, Consumer Reports, New York Times, Saturday Evening Post, New Republic, U.S. News & World Report, and T.V. Guide. The charged parties received many of the same subscriptions.

Mogelson, Weisenburger and Bastian claimed that the magazine subscriptions delivered to their homes and paid for by Local 320 were related to union business. The Panel found

that their arguments were unavailing and that the magazine subscriptions were personal in nature. In doing so, the Panel noted that the Local Union did not purchase magazine subscriptions for other business agents, that the charged parties conceded that they did not read some of the magazines, and that they even had Local 320 pay for subscription renewals for magazines they had been subscribing to with their own funds.

Executive Board Meeting Attendance Fees

Finally, the Panel found that the four former full-time officers of Local 320 were not entitled to receive additional compensation for attending meetings of the Local Union Executive Board. These monthly payments in addition to their regular salaries were $375 per month from February, 1990 through May, 1993 and $425 per month from June, 1993 through December, 1994.

In sustaining the charges with respect to Executive Board meeting attendance fees, the Panel relied heavily on the IBT Ethical Practices Policy Letter No. 2 issued on October 10, 1995. That Policy Letter was issued after the IRB initiated charges against the full-time officers of Local 320. The Policy Letter called on Local Unions that pay Executive Board meeting attendance fees to full-time officers and employees to cease that practice immediately and seek reimbursement for such fees received in violation of the Local Union Bylaws.

On February 29, 1996 General Secretary-Treasurer Sever and I issued a clarification of the Ethical Practices Policy concerning Executive Board meeting attendance fees. The clarification directed that reimbursement of meeting attendance fees paid prior to October, 1995 was required unless the Local Union membership was aware of the

payments from the minutes and approved of the payments at the time they were paid.

The hearing record in this case indicates that the membership of Local 320 was not aware that its full-time officers were receiving meeting attendance fees in addition to their regular Officer salaries. In fact, the charged parties admitted that the stipends they received for attending Executive Board meetings were never brought to the membership for its approval in the first place, nor were any of the subsequent increases in payments brought to the attention of the membership. For these reasons, the Panel properly found that the charged parties violated Section 14(E) of the Local 320 Bylaws and their oaths of office by accepting monthly Executive Board meeting attendance fees.

Conclusion

Based on these findings, I conclude that the charged parties brought reproach upon the IBT, breached their fiduciary duties to the members and embezzled Local 320 funds through the sale and purchase of Local 320 leased cars and the purchase of magazine subscriptions delivered to their houses. The charged parties also violated the Local 320 Bylaws and the International Constitution by accepting monthly Executive Board meeting attendance fees without membership knowledge or approval. Accordingly, I hereby impose the following penalties against the charged parties for the reasons stated below:

1. David Morris is permanently barred from membership in Local 320, the IBT or any of its affiliated entities.[2] Morris is barred from holding any office or appointed position or acting as a consultant for Local 320, the

[2] Morris failed to appear at the hearing and offered no defense to the charges against him.

IBT, or any IBT affiliated entity. Morris is fined in the total amount of $80,205 for arranging the sale of twenty (20) Local 320 leased cars to Local 320 officers and his friend and relatives for less than fair market value ($51,943),[3] for the Executive Board meeting attendance fees he received in violation of the Local Union Bylaws ($26, 975), and for the magazine subscriptions unrelated to union business paid for by Local 320 and delivered to his home ($1,287).

2. Jack Mogelson is suspended from membership in the IBT for one (1) year and barred from holding elected or appointed office with Local 320, the IBT or any IBT affiliated entity for a period of two (2) years. Mogelson is fined in the total amount of $31,395 for the car he purchased from Local 320 for less than fair market value ($12,273), for Executive Board meeting attendance fees he received in violation of the Local Union Bylaws ($26,975), and for the magazine subscriptions unrelated to union business, paid for by Local 320 and delivered to his home ($2,147). This fine must be paid before Mogelson can run for or hold either elected or appointed office even after the two (2) year suspension is concluded. This fine may not be waived.

3. Lawrence Bastian is suspended from membership in the IBT for one (1) year and barred from holding elected or appointed office with Local 320, the IBT or any IBT affiliated entity for a period of two (2) years. Bastian is fined in the total amount of $41,518 for the four cars he purchased from Local 320 for less than the fair market value ($13,620), for Executive Board meeting attendance fees he received in violation of the Local Union Bylaws ($26,975), and for the magazine subscriptions unrelated to union business, paid for by Local 320 and delivered to his home ($923). This fine

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[3] The fines for the sale and purchase of Local 320 vehicles are based on the lowest amount in the IRB valuation range that is most favorable to the charged parties.

must be paid before Bastian can run for or hold either elected or appointed office even after the two (2) year suspension is concluded. This fine may not be waived.

4. Robert Weisenburger is suspended from membership in the IBT for one (1) year and barred from holding elected or appointed office with Local 320, the IBT or any IBT affiliated entity for a period of two (2) years. Weisenburger is fined in the total amount of $36,082 for the two cars he purchased from Local 320 for less than fair market value ($7,867), for Executive Board meeting attendance fees he received in violation of the Local Union Bylaws ($26,975), and for the magazine subscriptions unrelated to union business, paid for by Local 320 and delivered to his home ($1,240). This fine must be paid before Weisenburger can run for or hold either elected or appointed office even after the two (2) year suspension is concluded. This fine may not be waived.

/s/

Ron Carey
General President

Dated: March 6, 1996

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	
Plaintiff	)	88 CIV 4486(DNE)
against	)	AFFIDAVIT OF
	)	ROBERT
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et. al.	)	WEISENBURGER
Defendants	)	

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss

I, Robert Weisenburger do state under oath as follows:

1. I am one of two Plaintiffs in the causes of action pending in United States District Court, for the State of Minnesota (97-1101, 97-1289).

2. Minnesota Teamster Public and Law Enforcement Union, Local 320 (320) is no longer in Trusteeship. Since my removal from the position of President of 320, 1 have not sought to interfere with or intercede in the ongoing affairs of 320, during or since its Trusteeship, or at any time since the Trusteeship terminated.

3. 1 do not seek to interfere with or intercede in the ongoing affairs of 320 through either of these judicial proceedings, nor

do I seek direct affirmative judicial relief to restore me to the position I held at the time of my removal.

4. The basis for my claims in the "defamation" action are the statements made over a period of one year to publicize the charges brought against me.

5. The basis of my claims in the "labor" action is to challenge the circumstances of my removal based on the representations made to me by agents of 320 and IBT which led me to resign, as well as the course of subsequent proceedings after charges were initiated. I seek a review of the actions of agents and representatives of the IBT, IRB and Trustee in the course of those proceedings to demonstrate that my rights to due process and to a fair hearing were deprived: including but not limited to the right to have representation, the right to have access to audits and other documents to demonstrate the propriety of my actions as President, the right to effectively cross examine witnesses, the right to a timely decision, and the right of appeal. I seek this review to clear my name and obtain relief as damages. This does not include a request for judicial intervention into the active affairs of 320, except as might relate to my *eligibility* to be restored to my former officer position should it be found that my suspension was improper.

6. No charge has ever been brought against me that I have associated or been involved with any member of organized crime.

FURTHER YOUR AFFIANT SAITH NOT

/s/ Robert J. Weisenburger

Subscribed and sworn to
this 14 day of June, 1997

/s/ David A. Singer
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	
Plaintiff	)	88 CIV 4486(DNE)
against	)	AFFIDAVIT OF
	)	LAWRENCE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et. al.	)	BASTIAN
Defendants	)	

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss

I, Lawrence Bastian do state under oath as follows:

1. I am one of two Plaintiffs in the causes of action pending in United States District Court, for the State of Minnesota (97-1101, 97-1289).

2. Minnesota Teamster Public and Law Enforcement Union, Local 320 (320) is no longer in Trusteeship. Since my removal from the position of Vice President of 320, I have not sought to interfere with or intercede in the ongoing affairs of 320, during or since its Trusteeship, or at any time since the Trusteeship terminated.

3. I do not seek to interfere with or intercede in the ongoing affairs of 320 through either of these judicial proceedings, nor

do I seek direct affirmative judicial relief to restore me to the position I held at the time of my removal.

4. The basis for my claims in the "defamation" action are the statements made over a period of one year to publicize the charges brought against me.

5. The basis of my claims in the "labor" action is to challenge the circumstances of my removal based on the representations made to me by agents of 320 and IBT which led me to resign, as well as the course of subsequent proceedings after charges were initiated. I seek a review of the actions of agents and representatives of the IBT, IRB and Trustee in the course of those proceedings to demonstrate that my rights to due process and to a fair hearing were deprived: including but not limited to the right to have representation, the right to have access to audits and other documents to demonstrate the propriety of my actions as Vice President, the right to effectively cross examine witnesses, the right to a timely decision, and the right of appeal. I seek this review to clear my name and obtain relief as damages. This does not include a request for judicial intervention into the active affairs of 320, except as might relate to my eligibility to be restored to my former officer position should it be found that my suspension was improper.

6. No charge has ever been brought against me that I have associated or been involved with any member of organized crime.

FURTHER YOUR AFFIANT SAITH NOT

/s/ Lawrence G. Bastian

Subscribed and sworn to
this 14 day of June, 1997

/s/ David A. Singer
Notary Public

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURTHOUSE
40 FOLEY SQUARE
NEW YORK 10007

KAREN GREVE MILTON
ACTING CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the **20** day of **July** one thousand nine hundred and ninety-nine.

Present:

Hon. James L. Oakes,
Hon. Dennis Jacobs,
Hon. Rosemary S. Pooler,

CIRCUIT JUDGES,

USA,	)	
vs.	)	Docket No. 98-6074
Int'l Brotherhood,	)	

A petition for panel rehearing having been filed herein by LAWRENCE BASTIAN and ROBERT WEISENBURGER

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
KAREN GREVE MILTON, Acting Clerk

By: /s/
Beth J. Meanor,
Administrative Attorney

BEST AVAILABLE COPY

Supreme Court, U.S.
FILED
JAN 28 2000
CLERK

No. 99-1106

IN THE

Supreme Court of the United States

LAWRENCE BASTIAN AND ROBERT WEISENBURGER,
Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

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QUESTION PRESENTED

Whether the District Court designated exclusively to supervise the administration and implementation of the Consent Decree between the United States Government and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("I.B.T."), properly exercised its jurisdiction under the Consent Decree and All Writs Act, 28 U.S.C. § 1651, by limiting the prosecution of two actions to the District Court where (a) one action named the Independent Review Board ("IRB") (a body created pursuant to the Consent Decree) as a defendant, and (b) both actions challenged the findings of the IRB, and the fairness of proceedings held by the IRB?

The Court of Appeals answered this question in the affirmative.

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Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (hereinafter "respondent" or "IBT") respectfully submits this brief in opposition to the petition for a writ of certiorari submitted by petitioners, Lawrence Bastian ("Bastian") and Robert Weisenburger ("Weisenburger") (hereinafter referred to collectively as "petitioners").

STATEMENT OF THE CASE

1. A General Overview of the Consent Decree

In 1989, the I.B.T. and the United States Government entered into a consent decree (the "Consent Decree") settling a lawsuit brought by the Government against the I.B.T. under the Racketeer Influence and Corruption Organizations Act ("RICO"), 18 U.S.C. § 1964 (1968). *See United States v. I.B.T.*, Docket No. 88 Civ. 4486 (DNE) (S.D.N.Y.) (C.A. JA 114-45)[1]. The Consent Decree was approved by the United States District Court for the Southern District of New York on March 14, 1989. (C.A. JA 140).

The Consent Decree initially provided for the appointment of three officers, an Investigations Officer, an Independent Administrator as well as an Election Officer. These officers were given the responsibility of carrying out the terms of the Consent Decree, including the responsibility to (a) supervise and monitor certain activities of the I.B.T., (b) conduct investigations within the union, and (c) conduct internal disciplinary and other hearings. (C.A. JA 120-130).

---

1. References within this brief to "C.A. JA" relate to the Joint Appendix submitted to the United States Court of Appeals for the Second Circuit.

In the second phase of the Consent Decree, following certification of the 1991 I.B.T. international officer election, an Independent Review Board ("IRB") was established. (C.A. JA 131) The IRB was empowered to supervise the I.B.T. on an ongoing basis, and generally, to make recommendations to the I.B.T. or I.B.T. affiliates. The IRB was delegated the responsibility to monitor responses of the I.B.T. and its affiliates, while retaining ultimate authority to conduct its own hearing in certain circumstances based on the response of the I.B.T. or the I.B.T. affiliate. (C.A. JA 134)[2]

The IRB's authority under the Consent Decree is not limited to allegations involving organized crime. Under Paragraph G(a) and G(b) of the Consent Decree, as well as Rule H of the IRB Rules and Procedures[3], the IRB is authorized to investigate: (1) any allegation of corruption in

---

2. Petitioners did not include in their Appendix either the provisions of the Consent Decree establishing the IRB or the IRB Rules, both of which were approved by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit. The Consent Decree, in its entirety, is reprinted at pages 114 through 143 of the Court of Appeals' Joint Appendix. The IRB Rules, in their entirety, are officially reported in *United States v. I.B.T.*, 829 F. Supp. 602 (S.D.N.Y. 1993)

3. Following the District Court's approval of the Consent Decree, more specific rules governing the operation of the IRB (the "IRB Rules") were approved, with modifications, by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit. *See United States v. I.B.T.*, 803 F. Supp. 761 (S.D.N.Y. 1992), *aff'd in part, rev'd in part*, 998 F.2d 1101 (2d Cir. 1993), *on remand*, 829 F. Supp. 602 (S.D.N.Y. 1993)

I.B.T. affiliates, including bribery, embezzlement, extortion, loan sharking, violations of 29 U.S.C. § 530 of the Landrum Griffin Act, criminal violations of Taft-Hartley or the Hobbs Act, and any act of racketeering activity including the extortion of I.B.T. members' unions democracy right as defined by applicable law, (2) any allegation of domination, control or influence over any I.B.T. affiliate by organized crime or other criminal group, (3) any conduct that in the IRB's view brings reproach upon the Union, and (4) any failure by an I.B.T. entity to cooperate fully with the IRB in any investigation. (C.A. JA 131). The IRB is authorized and empowered to exercise the investigative authority of the I.B.T. General President, as well as its General Secretary-Treasurer. (C.A. JA 131). *See United States v. I.B.T.* (the "IRB Rules Decision"), 829 F. Supp. 602, 605 (S.D.N.Y. 1993); *citing* IRB Rule H(1).

The IRB is also empowered, following investigation, to make recommendations to the I.B.T., including detailed proposed findings, and referrals that (a) an I.B.T. affiliated body be placed into trusteeship and/or (b) disciplinary charges be brought against I.B.T. officers, members, employees, agents and representatives (C.A. JA 132-133). The IRB may also require that an I.B.T. entity resolve a referred matter in a timely manner. (C.A. JA 133) *see also IRB Rules Decision*, 829 F. Supp. at 606 (approving and adopting the procedure set forth in IRB Rule I(1) through I(9)). The IRB is authorized to retain continuing jurisdiction over, and is required to monitor, the I.B.T.'s actions in response to a recommendation that a local union be placed under trusteeship and/or that disciplinary charges be filed against local union officers. *see* Section G of the Consent Decree; *see also* IRB Rule I(5).

Under IRB Rule I(5), the I.B.T. shall, upon referral from the IRB, "promptly undertake whatever action is appropriate under the circumstances to resolve the referred matter . . ." *see IRB Rules Decision*, 829 F. Supp at 606. If the IRB determines that "a matter is not being or has not been pursued and decided by the IBT entity . . . in a lawful, responsible and timely manner," and after giving the I.B.T. an opportunity to take additional actions, the IRB may convene its own hearing on the matter and submit its written decision to the District Court "to be entered as an order of the Court." *see* IRB Rule I(7), I(8) and K(l); *see also IRB Rules Decision*, 829 F. Supp. at 606-07.

The IRB Rules describe the obligations of the I.B.T. and I.B.T. affiliates in responding to an IRB report recommending that disciplinary or trusteeship action be taken against an I.B.T. member or affiliate. The I.B.T. General President is obligated to take action in response to such a report "promptly . . . as provided by the I.B.T. Constitution, applicable law and the — Rules,". In addition, under IRB Rule L, all I.B.T. local unions and affiliates are subject to the authority and jurisdiction of the IRB and must "cooperate fully" in any IRB investigation or enforcement action. *See IRB Rules Decision*, 829 F. Supp. at 606-07.

2. An Overview of the All Writs Order

The parties to the Consent Decree agreed in that Decree that the United States District Court for the Southern District of New York (the "District Court") "has jurisdiction over the subject matter of the action, has personal jurisdiction over the parties, and shall retain jurisdiction over this case until further order of the Court." (C.A. JA 115). The parties also agreed that the District Court retained jurisdiction to "entertain any future applications" by the parties. (C.A. JA 137).

In aid of its jurisdiction to supervise the implementation of the Consent Decree, and in response to numerous lawsuits filed across the country challenging the actions of the officers appointed by the District Court in the pre-1991 phase of the Consent Decree, the District Court issued a permanent injunctive order pursuant to the All Writs Act, 28 U.S.C. § 1651.[4] *see United States v. I.B.T. ("All Writs Order")*, 728 F. Supp. 1032 (S.D.N.Y.), *aff'd*, 907 F.2d 277 (2d Cir. 1990)[5]. That order enjoined all I.B.T. affiliates, including I.B.T. local unions and other entities subordinate to or affiliated with the I.B.T, and any members, officers, representatives; agents and employees of the I.B.T. from

> filing or taking any legal action that challenges, impedes, seeks review of or relief from, or seeks to prevent or delay any act of any of the court officers appointed by the Court pursuant to the Consent Order in this action, in any court or forum in any jurisdiction except this Court.

All Writs Order, 728 F. Supp. at 1039.[6] The purpose of the All Writs Act Order was to (1) "avoid the significant risk of

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4. The All Writs Act provides that federal courts may "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *see* 28 U.S.C. § 1651(a).

5. In upholding the All Writs Order, the Court of Appeals concluded that the order was a "necessary means of protecting the district court's jurisdiction over the implementation of the Consent Decree. *Id.* 907 F.2d at 280

6. The challenges giving rise to the All Writs Order occurred in cases involving the discipline of union members and officers who resided in jurisdictions that were outside of New York. *All Writs Order*, 728 F. Supp. at 1037-1040, 1042-43.

subjecting the Consent Decree to inconsistent interpretations and the Court Officers to inconsistent judgments"; (2) to avoid "widespread litigation across the country [which] would subvert the reform bogging the Court officers down in duplicative, harassing and perhaps frivolous litigation;" and (3) to further "judicial economy" in preventing "similar issues" to be "litigated multiple times in different districts. *see All Writs Order*, 728 F. Supp. at 1047-48 *see also United States v. I.B.T.*, 907 F.2d at 280.

In a prior case, the Court of Appeals affirmed the application of the All Writs Act Order under circumstances where legal actions filed outside the Southern District of New York "challenge the findings of the IRB or its underlying fairness." *I.B.T. v. Local Union 714*, 109 F.3d 846, 849 (2d Cir. 1997).[7] In reaching its conclusion, the Court of Appeals was careful not to establish "a general jurisdictional rule applicable to any legal action in which a subordinate entity challenges the I.B.T.'s imposition of remedial measures in the wake of a recommendation from the IRB," but to make narrow "holdings based on the facts of a particular lawsuit." *Id.* 109 F.3d at 849.

3. The IBT Constitution

Article VI, Section 5 of the I.B.T. Constitution affords the General President wide ranging power to institute trusteeships

7. More specifically, the Court of Appeals reasoned that the actions and resulting appeals challenged "the propriety of actions" that were taken pursuant to the consent decree. In that case, the locals intended "to contest IRB findings and to question the impartiality of the IRB." The Court of Appeals concluded that "such allegations go to the legitimacy of the reform process established by the consent decree in the underlying RICO action, thereby making these actions the proper concern of the district court that is supervising litigation under the decree." *United States v. I.B.T.*, 109 F.3d at 849.

in order to correct corruption, financial malpractice, or other misfeasance, or to assure performance of collective bargaining agreements "where, in the judgment of the General President, an emergency situation exists within the Local Union". Article VI, Section 5(b) of the I.B.T. Constitution provides, in pertinent part that, the Trustee is authorized to take "full charge of the affairs of the Local." Disciplinary charges may be brought based on, inter alia,

> (1). Violation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder.
>
> (2). Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.
>
> (3). Breaching a fiduciary obligation owed to any labor organization by any act of embezzlement or conversion of union's funds or property.

See IBT Constitution, Article XIX, Section 7(b) (C.A. JA 351)

Article XIX, Section 11(b) of the I.B.T. Constitution provides that the General President, acting under emergency power, may appoint a representative to conduct a hearing and make a recommendation to the General President.

4. The Placement of Local 320 Under Trusteeship

Pursuant to its authority under the Consent Decree and the I.B.T. Constitution, the IRB conducted an investigation

of Local 320. On May 5, 1995, the IRB issued a 54 page report in which it provided detailed findings, and recommended that the I.B.T. place Local 320 in trusteeship.[8] (C.A. JA 184-236). The IRB's investigation revealed that between 1989 and 1994, Local 320 had collected "over two million dollars each year from members," but that the Union was nonetheless required to obtain loans in excess of $350,000, leaving Local 320 in a precarious financial condition. (C.A. JA 183-247).

In addition, the IRB found that Local 320 "engaged in a variety of practices designed for the personal benefit of [Local 320's] four full time officers," including petitioners, Bastian and Weisenburger. (C.A. JA 183). Such practices included (a) arranging for the sale of cars leased by Local 320 to Local 320 officers, relatives and friends at prices that were less than the fair market value, (b) purchasing magazines for the personal use of Local 320 officers and staff, and (c) using local union funds to pay a massage therapist to provide massages once a month to Local 320 officers and staff. (C.A. JA 183). The I.B.T. General President imposed an emergency trusteeship over the affairs of Local 320, and appointed a temporary trustee. (C.A. JA 248-49). Local 320's officers, including petitioners, Bastian and Weisenburger, resigned on May 3, 1995. (C.A. JA 158 at ¶ V and 252).

A hearing on whether to extend or dissolve the trusteeship was conducted before a three member panel on

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8. At the time of the investigation and report, the members of the IRB were the Honorable Frederick B. Lacey, former U.S. District Court Judge, William Webster, former FBI and CIA Director and former U.S. District Court and Circuit Court of Appeals Judge, and Grant Crandell, General Counsel of the United Mineworkers of America.

July 11, 1995. (C.A. JA 252) Based on the panel's findings and recommendation, and the hearing record, the General President determined to continue the trusteeship "in order to correct financial malpractice, place [Local 320] on a sound financial footing and ensure that the interests of the membership are protected." (C.A. JA 252-253). The General President relied extensively upon the IRB's findings that Local 320 was in a precarious financial condition, and that it had engaged in a variety of practices designed to personally benefit the Local's four full-time officers. (C.A. JA 252-253). In addition, the IBT's General President found that (a) the Trustee had implemented a process to bring financial stability to Local 320, (b) continuation of the trusteeship was necessary to effectively discharge the Union's representational duties and (c) "an overwhelming majority" of Local 320's membership who testified at the hearing supported the trusteeship. (C.A. JA 252-253).

5. The Internal Union Charges

On May 9, 1995, the IRB issued a second report, recommending that the I.B.T. bring charges against Local 320 officers, including petitioners, Weisenburger and Bastian. The IRB concluded that the actions of the Local 320 officers, including the petitioners, had brought reproach upon the I.B.T., constituted a breach of their fiduciary obligations to Local 320 members, and constituted embezzlement of Local 320 funds. (C.A. JA 254-324). The IRB directed the Trustee of Local 320 to hold a hearing and to submit a final report within 60 days of the IRB's recommendation pursuant to Section G, paragraphs (d) and (e) of the Consent Decree. (C.A. JA 254).

In accordance with the IRB's report and recommendation, internal union charges were proffered

against petitioners, Bastian and Weisenburger, as well as the other former officers of Local 320. A hearing on the charges was conducted before a panel of three I.B.T. members (the "hearing panel") on September 12, 1995 and September 13, 1995. (C.A. JA 349). In February of 1996, the hearing panel issued a written report in which it concluded that the petitioners, Bastian and Weisenburger, had breached their fiduciary duties to Local 320. The hearing panel unanimously recommended that the charges be sustained, that the petitioners be suspended from holding office for a period of time, and that they be obligated to repay to the Local Union the monies which had been misappropriated. (C.A. JA 349-83).

Pursuant to the Consent Decree and the I.B.T. Constitution, the General President issued a decision on March 6, 1996, affirming the panel's decision and finding that Local 320's officers, including petitioners Bastian and Weisenburger, had brought reproach on the I.B.T., breached their fiduciary duties, and embezzled monies from Local 320. (C.A. JA 325-32). In particular, the General President concluded that petitioners Bastian and Weisenburger had (a) embezzled Local 320 funds through the sale and purchase of Local 320 leased cars and the purchase of magazine subscriptions delivered to their houses, and (b) violated the Local 320 Bylaws and the International Constitution by accepting monthly Executive Board meeting attendance fees without membership knowledge or approval. (C.A. JA 330-31).

Petitioners Bastian and Weisenburger were fined, suspended from membership in the I.B.T. for one year, and barred from holding I.B.T. office for two years. (C.A. JA 331(b)-332).

6. The Proceedings Below

i. The Constructive Discharge and Defamation Litigation

On May 2, 1997, a year following the I.B.T.'s action, petitioners Bastian and Weisenburger filed a lawsuit in the United States District Court for the District of Minnesota against the IRB, Local 320, the Local 320 Trustee, the I.B.T., I.B.T. General President Ronald Carey, and a benefit fund (hereinafter referred to as the "Constructive Discharge Action"). (C.A. JA 167-70). In summary, the petitioners alleged that the IRB (referred to in the Complaint as the "Board") and the I.B.T. made "false charges of embezzlement and other conduct" against them, resulting in their constructive discharge. In relevant part, the complaint in the Constructive Discharge Action alleged as follows:

> 8. At various times between April 11, 1994 and May 3, 1985, the "International" by and through its President "Carey" and/or the "Board" initiated an investigation into the financial affairs of 320; and the conduct of its various officers, including but not limited to the Plaintiffs herein regarding the management of the financial affairs of "320", through their exercise of the responsibilities of their fiduciary positions. Such allegations included false charges of embezzlement and other conduct that adversely impacted upon their professional stature and ability to continue to serve as union agents and officials.
>
> 9. On or about May 3, 1995, the conduct of the various defendants herein, culminated in the constructive discharge of the Plaintiffs . . .

(C.A. JA 168) (emphasis added). Petitioners sought damages against all of the Defendants, including the IRB, and injunctive relief restoring them to their positions with Local 320. (C.A. JA 169-170)

Additionally, on May 8, 1997, petitioners filed an action in Minnesota State Court against Local 320, the Local 320 Trustee, and the I.B.T. (the "Defamation Action") (the "Defamation Action" and the "Constructive Discharge Action" are collectively referred to as the "Bastian Actions"). (C.A. JA 156-59). This lawsuit alleged, inter alia, that the IRB's proposed recommended charges were "false" and brought in "reckless disregard of the truth," with improper motive constituting "malice," and beyond "the scope of any qualified privilege":

VI.

> On or about May 9, 1995, the International, by and through its Independent Review Board, published "proposed charges" against the plaintiffs herein, and other officers of 320; by dissemination of such charges to Yates as Trustee of 320. Thereafter, Yates, acting on behalf of 320, under the authority of his position as Trustee, initiated and published charges against the Plaintiffs herein which evolved from the proposed charges published by the International.

VII.

> The charges referred to in Paragraph VI hereinabove, alleged that the Plaintiffs "embezzled Local funds" and "breached their

> fiduciary duties" as officers of 320. The charges were brought in reckless disregard of the truth, with improper motive constituting malice, with intent to harm the character and reputation of the Plaintiffs, and beyond the scope of any qualified privilege.
>
> VIII.
>
> The charges brought against the Plaintiffs involving alleged intentional embezzlement and breach of fiduciary duty are defamatory per se, and have a meaning that directly damage the reputation and good character of the Plaintiffs. Said charges are false, and do not have an objective factual basis indicating intentional wrongdoing of conduct designed to defraud 320 of its financial resources.

(C.A. JA 158) (emphasis added).

On May 28, 1997, the I.B.T. removed the Defamation Action to the United States District Court for the District of Minnesota. (C.A. JA 160-64). On June 4, 1997, the petitioners' counsel sent an Amended Complaint ("Amended Complaint") in the Defamation Action to the I.B.T.'s counsel in which the petitioners continued to allege, *inter alia*, that the IRB and the I.B.T. made false charges of embezzlement and breach of fiduciary duty which are "defamatory per se." (C.A. JA 1171-74).

ii. The Order of the United States District Court for the Southern District of New York

On June 11, 1997, the IBT filed a motion with the United States District Court for the Southern District of New York seeking a preliminary injunction, pursuant to the District Court's All Writs Order and opinion, to prohibit the continued prosecution of the Constructive Discharge Action and the Defamation Action anywhere other than in the United States District Court for the Southern District of New York. (C.A. JA 144-145).

Following a hearing and oral argument, during which counsel for the United States formally appeared and supported the I.B.T.'s position (*see* C.A. JA 471-73), the District Court granted a preliminary injunction and prohibited the petitioners from continuing to bring the Constructive Discharge and Defamation lawsuits in any forum other than the District Court. (C.A. JA 475, 477-478). Specifically, the District Court found that both actions challenged the "substance and the findings of IRB reports and, thus, affect the IRB's ability to perform the duties imposed upon it by the Consent Decree" (C.A. JA 476), and held that both lawsuits were within the exclusive jurisdiction of the District Court under the Consent Decree and the All Writs Act. (C.A. JA 478)

iii. The Decision of the Court of Appeals.

On April 9, 1998, the petitioners filed a notice of appeal to the United States Court of Appeals for the Second Circuit (the "Court of Appeals"). The Court of Appeals, in an unpublished summary order, affirmed the decision "for substantially the reasons articulated by the district court."

(Pet. App. A-3). The Court of Appeals concluded that both actions "challenged the 'findings of the IRB' and the 'substance of the IRB reports' ", and therefore, consistent with Second Circuit precedent, were "within the exclusive jurisdiction of the Southern District pursuant to the All Writs Order." (Pet. App. A-4).

The Court noted that the Constructive Discharge Action named the IRB as defendant, which was "alone sufficient to support" an All Writs Act injunction. In addition, the Court noted that the entire premise of the Constructive Discharge Action was that the discharge of the petitioners was based upon the IRB's "false charges" and finding of wrongdoing . . . which was false". (Pet App. A-4) The Court concluded that "[t]he binding litigation of such questions in many fora and jurisdictions would obviously impair the ability of the IRE to function adequately and efficiently under the Consent Decree." (Pet. App. A-4).

With respect to the Defamation Action, the Court of Appeals noted that the action challenged the IRB's "findings" and "the substance of the IRB/I.B.T. discipline process established by the Consent Decree." (Pet. App. A-4). The Court concluded that the Defamation Action fell "squarely within the four corners of the All Writs Order" because its outcome depended upon a "showing that the IRB investigation was improper and the IRB charges were false." (Pet. App. A-4). Finally the Court of Appeals dismissed the petitioners' remaining arguments, noting that "[N]othing in the Consent Decree or the All Writs Order limits the Consent Decree to matters involving organized crime or to matters arising under federal labor laws." (Pet. App. A-4-A-5).

Petitioners' request for a rehearing *en banc* was denied by the Court of Appeals on July 20, 1999. (Pet. App. A-95).

REASONS FOR DENYING THE WRIT

I. THERE IS NO COMPELLING REASON TO GRANT THE PETITION

The potpourri of issues raised by the petitioners do not warrant a grant of the petition.[9]

A. In the first instance, petitioners do not assert a conflict between the decision below and the decision of another court of appeals, or a state court of last resort on the same matter. *C.f.* Sup. Ct. R. 10(a) and 10(b); *see also Braxton v. United States*, 500 U.S. 344, 347 (1991) ("A principal purpose for which [the Court] uses [its] certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law.") (emphasis added)

B. Petitioners do assert that the decision of the court of appeals "is in contravention" of this Court's decision in *Linn v. Plant Guard Workers of America, Local 114*, 383 U.S. 53 (1966)[10]. Petitioners' analysis is completely off the mark.

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9. Supreme Court Rule 10 states, in relevant part, as follows: "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons."

10. Petitioners describe *Linn* as holding that a claim of defamation is not preempted by the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a). While in *Linn* this Court held that state court libel actions are not pre-empted by the exclusive

(Cont'd)

Linn is irrelevant here for several reasons. First, the Consent Decree was predicated on RICO jurisdiction, not the Labor Management Relations Act. More important, the Court of Appeals and District Court did not hold that the petitioners' defamation lawsuit was pre-empted by federal law. The District Court and the Court of Appeals merely concluded that the Bastian Actions, because they (a) named the IRB as a defendant and/or (b) challenged the IRB's findings and the fairness of its proceedings, were subject to the exclusive jurisdiction of the District Court supervising the Consent Decree. Petitioners do not suggest how such a decision is in conflict with *Linn* or any other decision of this Court.

Petitioners display a complete misunderstanding of the decision below when they suggest that a failure by this Court to grant certiorari will create a "significant risk that the extra-territorial application of the Consent Decree will be wrongfully extended to preclude the personal claims of other individuals with I.B.T. affiliates around the country." (Pet. at 6-7). Again, the decision below did not impair or preclude the prosecution of the petitioners' claims in any way. Indeed, at the preliminary injunction hearing itself, the District Court offered the petitioners a speedy, if not immediate, trial on the merits of the claims. (Pet. App. A-21). Petitioners declined the District Court's invitation, and in fact, have not sought discovery or otherwise proceeded with their lawsuits other than to proceed with an appeal from the District Court's order.

C. Petitioners assert that the decision below is inconsistent with prior decisions of the same court of appeals on questions

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(Cont'd)
jurisdiction of the National Labor Relations Board, this Court did impose, as a matter of federal labor law, a standard requiring a finding of both malice and actual damages. *Id.* at 64-65.

of jurisdiction. (Pet. at 6). Petitioners' argument is wrong. *see* Point II, *infra* at page 21[1]. Regardless, the inconsistency of a decision of a court of appeals with a prior decision of the same court of appeals is not a basis for this Court to grant a petition for a writ of certiorari. *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties."); *cf.* Sup. Ct. R. 10(a).

D. Petitioners assert that the petition should be granted because jurisdiction under the Consent Decree is, or should be, limited to, allegations of organized crime activity. Petitioners are once again mistaken. Over the last ten years, the Court of Appeals has consistently interpreted the reach of the Consent Decree as not being limited to organized crime activity. *see* Point II, *infra* at pages 21-22. In any event, the petitioners do not advance any reason why such an issue would merit review by this Court. This issue is not constitutional in nature nor does it involve a conflict with the decisions of any other court of appeals. In addition, this issue is raised ten years into the jurisprudence of this Consent Decree, does not affect any other case, and raises no alleged important question of federal law.

E. Finally, petitioners assert that the petition should be granted because otherwise, "there is a significant risk that the I.B.T. or the United States will abuse its authority under the Consent Decree and force all of its subordinate officers to litigate statutory claims that involve disciplinary hearings process in the federal courts of New York". (Pet. at 8). This parade of horrors is also based on a complete misreading of the decision below.

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11. Petitioners did not seek *en banc* review by the Court of Appeals on that basis.

The Court of Appeals has correctly delineated, in both this case and prior cases, the limited jurisdiction of the District Court, in regard to the IRB, under the Consent Decree and All Writs Act. The Court of Appeals has made clear that it has not established a "general jurisdictional rule", even in regard to challenges to I.B.T. action taken in response to an IRB recommendation. It rather has followed a careful, case-by-case examination whether a lawsuit presents a "challenge to the findings of the IRB or its underlying fairness." *See Local 714*, 109 F.3d at 849. Petitioners not cite any history of impropriety in the litigation of claims. Thus, there is no compelling reason to grant the petition.

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S EXERCISE OF JURISDICTION

The Court of Appeals properly affirmed the District Court's decision to exercise its jurisdiction in issuing an order enjoining the prosecution of the Bastian Actions (the Defamation Action and Constructive Discharge Action) in any court other than the District Court. The decision of the Court of Appeals was consistent with its prior decision that such relief was appropriate in regard to legal actions that "challenge the findings of the IRB or its underlying fairness," and therefore implicate the Consent Decree. (Pet. App. A-4); *citing Local 714*, 109 F.3d at 849. The Court of Appeals' decision was also consistent with the purpose underlying the All Writs Act, 28 U.S.C. § 1651, and the All Writs Act Order, which is to: (1) avoid interpretations of, or judgments concerning the Consent Decree, across the country, (2) avoid widespread litigation bogging down the work of official appointee to carry out the Consent Decree and (3) further "judicial economy" in preventing the litigation of similar

issues multiple times in different districts. *United States v. I.B.T.*, 907 F.2d at 280.

1. The Bastian Actions Implicate the Consent Decree

Petitioners assert that the Constructive Discharge and Defamation actions do not implicate the Consent Decree because the misconduct involved in the trusteeship and disciplinary charges did not involve organized crime or corruption.[12] This argument is absurd. The Consent Decree and the IRB Rules clearly provide the IRB with jurisdiction beyond organized crime. *See* Consent Decree Section G (outlining scope of conduct subject to IRB investigatory authority); *see also IRB Rules Decision*, 829 F. Supp. at 605 (same).

The proper inquiry, therefore, is whether the Bastian Actions challenge the IRB's ability to perform its duties under the Consent Decree, including the investigation of improper activities of union officers other than those which relate to "organized" crime. Indeed, the Court of Appeals has held that the Consent Decree is implicated by, and that the District

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12. The petitioners go as far as to suggest that the absence of La Cosa Nostra influence in a particular instance obviates the application of the Consent Decree notwithstanding the existence of actual criminal activity. Such an argument is ludicrous as it flies in the face of both the purpose and intent of the Consent Decree. *See* Consent Decree Section G; *IRB Rules Decision*, 829 F. Supp. at 605; *see also United States v. I.B.T. ("Wilson, Weber & Dickens")*, 978 F.2d 68 (2d Cir. 1992) (discipline imposed under the consent decree for embezzlement and violation of local union's bylaws); *United States v. I.B.T. ("Local 493 Officers")*, 986 F.2d 15 (2d Cir. 1993) (discipline imposed under the consent decree for embezzlement); *United States v. I.B.T ("Parise")*, 970 F.2d 1132 (2d Cir. 1992) (discipline imposed under the consent decree based upon assault and failure to testify before investigations officer).

Court had exclusive jurisdiction in a case where (a) the misconduct that was investigated by the IRB, and (b) served as the basis for recommending imposition of a trusteeship or disciplinary charges, notwithstanding the fact that it did not involve organized crime.[13] *See e.g. Local Union 714*, 109 F.3d at 849 (in affirming the injunction issued by the district court, the Court of Appeals noted as follows: "Both of the present appeals challenge 'the propriety of actions' taken pursuant to the consent decree. The Locals have demonstrated that they intend to contest IRB findings and to question the impartiality of the IRB. Such allegations go to the legitimacy of the reform process established by the consent decree in the underlying RICO action, thereby making these actions the proper concern of the district court that is supervising litigation under the decree."). A similar case is presented here.

The IRB conducted its investigation of the affairs of Local 320 and made recommendations pursuant to its authority under the Consent Decree and the IRB Rules. Thus, the Consent Decree and the IRB Rules were clearly implicated by the I.B.T. (a) imposing a trusteeship upon the local union, and (b) initiating disciplinary charges against petitioners Bastian and Weisenburger. It is beyond challenge that the allegation in the Constructive Discharge Action that the conduct of the defendants (*i.e.* the IRB and the I.B.T.) resulted in plaintiffs' constructive discharge, implicates both the Consent Decree and the IRB Rules. Through the action,

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13. It is well-established that a trusteeship may be imposed on a local union by the I.B.T. "to eradicate corruption or financial malfeasance . . . to restore democratic procedures or to ensure any other legitimate objects of a subordinate labor organization." *International Brotherhood of Teamsters v. Local Union No. 810*, 19 F.3d 786, 790 (2d Cir. 1994); *citing* 29 U.S.C. § 462.

the petitioners challenge: (1) the factual basis, substance and finding of the IRB's recommendation to impose a trusteeship, and (2) the I.B.T.'s conduct in its attempt to resolve the matter pursuant to the Consent Decree and the IRB Rules.

In addition, petitioners seek (a) monetary damages against all of the defendants, including the IRB, for their alleged losses incurred as a result of the I.B.T. and the IRB's conduct, and (b) full restoration of their pre-trusteeship positions with Local 320, a remedy that directly challenges the imposition of the trusteeship and the decision of the I.B.T.'s General President to uphold the charges. Thus, petitioners are seeking direct review of, and relief from (a) the IRB's investigation, and (b) its recommendation to place Local 320 into trusteeship and to bring charges against the petitioners. Both the District Court and the Court of Appeals have held that "[a]ny action that challenges the ability of the IRB to perform the duties imposed upon it by the Consent Decree clearly implicates the Consent Decree." *International Brotherhood of Teamsters v. Local Union 745*, 938 F. Supp. 1186, 1192 (S.D.N.Y. 1996), *aff'd, Local 714*, 109 F.3d 846 (2d Cir. 1997). In that decision, the Court of Appeals held that "[s]uch allegations go to the legitimacy of the reform process established by the consent decree . . ." and that the District Court properly exercised Consent Decree jurisdiction over a case where the plaintiff challenged the "substance" or "findings" of IRB reports. *Local 714*, 109 F.3d at 849.

Despite petitioners' misleading assertion that "No IRB official has been named as a defendant or sued" (*see* Pet. at 5) and that "[N]o judgments are sought against court appointed members with the IRB" (*see* Pet. at 5), the Constructive Discharge Action actually names as defendants, *inter alia*, both the "International Brotherhood of Teamsters,

its Independent Review Board." (Pet. A-57). The Court of Appeals has noted, in both this case and others, that this fact alone is sufficient to warrant an All Writs Act injunction. (Pet. App. A-4); *see also United States v. I.B.T. ("Erbacci")*, 911 F. Supp. 743, 748-49 (S.D.N.Y.), *aff'd*, 96 F.3d 653 (2d Cir. 1996). Furthermore, the petitioners allege in the action that the IRB and the I.B.T. made "false charges of embezzlement and other conduct" against petitioners, and that they also made "false promises" about a termination of all other investigations and charges . . ." concerning the petitioners. (Pet. A-59). Petitioners seek monetary damages "jointly and severally against the defendants" and request that "plaintiffs be made whole for their losses and restored their full rights with '320'." (Pet. A-61). (Emphasis added).

Similarly, the Defamation Action implicates both the Consent Decree and the IRB Rules because the petitioners allege that the IRB's proposed charges, and the I.B.T.'s charges, were false, constitute defamation, and were brought for improper motives. More specifically, the Petitioners specifically allege that the IRB:

> published "proposed charges" against the plaintiffs by dissemination of such charges to Yates as Trustee of 320. Thereafter, Yates, acting on behalf of 320, under the authority of his position as Trustee, initiated published charges against the Plaintiffs herein which evolved from the proposed charges published by the [IRB].

Pet. App. A-40.

Petitioners allege that the charges were "false", do "not have an objective factual basis," and were brought "in

reckless disregard of the truth with improper motive constituting malice." Petitioners further allege that the charges were published "with intent to harm the character and reputation of the plaintiffs, and beyond the scope *of any qualified privilege.*" (Pet. App. A-40) (emphasis added). Moreover, Petitioners allege in the Amended Complaint that after internal union charges were brought against the petitioners, the defendants, including the respondent, "caused to be disseminated in the Minneapolis and St. Paul news media . . . defamatory statements about the Plaintiffs." (Pet. App. A-54-55).

On their face, these allegations directly implicate the Consent Decree because they (1) challenge the integrity of the IRB's investigative procedure, the authority of the to issue recommendations based upon its investigations, and the authority of the I.B.T. to act upon such recommendations, and (2) seek to have another court determine the scope of any privilege of the IRB and the I.B.T. in meeting their responsibilities under the Consent Decree. Indeed, petitioners admit to this Court that in the Defamation Action, they "allege the falsity of the charges recommended by the IRB as a predicate fact to the allegation of falsity of the media statements about those charges." (*see* Pet. at 4 and 5).

2. The District Court Order is Consistent with, and Effectuates, the All Writ Act Order

The Court of Appeals properly affirmed the District Court's issuance of an injunction under the All Writs Act because continued prosecution of the Bastian Actions elsewhere threaten (1) a significant risk of inconsistent interpretations of the Consent Decree and authority of the court-appointed officers, which would encourage forum

shopping; (2) burdening the IRB with harassing and duplicative litigation across the country; and (3) the inefficiencies of litigating similar issues multiple times in different districts. *See All Writs Order*, 728 F. Supp. at 1047-48; *aff'd*, 907 F.2d at 280.

First, prosecution of the Bastian Actions in any court other than the District Court creates the risk that a federal court in Minnesota will reach a decision in the Bastian Actions based upon an interpretation of the Consent Decree, the authority of the IRB, and any relevant privileges, in a manner inconsistent with the District Court's own interpretation. The Court of Appeals has emphasized that " 'for the IRB to function effectively, it is imperative that a single set of cohesive rulings define such fundamental issues as . . . the propriety of actions taken by officers appointed pursuant to the Consent Decree.' " *Local Union 714*, 109 F.3d at 849; *quoting United States v. I.B.T. ("Erbacci")*, 911 F. Supp. 743, 749 (S.D.N.Y.), *aff'd*, 96 F.3d 653 (2d Cir. 1996). The Court of Appeals' decision to affirm to the order of the District Court ensures that the issues raised by the Bastian Actions will be uniformly addressed, preventing forum shopping.

Second, the Court of Appeals' decision to affirm the District Court's order ensures that the IRB and its members will not have to expend time and funds travelling to, and engaging in litigation in Minnesota, and further, safeguards the IRB from (a) being impeded in its ability to enforce its responsibilities pursuant to the Consent Decree, and (b) being subject to damages or actions across the country. *Erbacci*, 911 F. Supp. at 748-49. Additionally, "the Consent Decree has spawned a tremendous amount of litigation that has required [the District Court] to issue numerous opinions,"

Local Union 745, 938 F. Supp. at 1188, which has resulted in "numerous" appeals, *Local 714*, 109 F.3d at 847. Separate legal actions, including actions involving similar issues raised by the Bastian Actions, may be brought in other courts while the Bastian Actions are pending. Thus, the Court of Appeals' affirmance of the District Court's order prevents challenges in courts other than the District Court that would hinder the I.B.T. and the IRB in implementing their responsibilities pursuant to the Consent Decree and the IRB Rules.

Finally, the Court of Appeals' decision to affirm the District Court's order prevents the litigation of similar issues arising from the same underlying circumstances multiple times. As the District Court has noted, "[b]ecause [it] has overseen the Consent Decree from its inception, [it] has thorough knowledge of the myriad decisions that make up the law of this case." *United States v. I.B.T. ("Darrow")*, 896 F. Supp. 1339, 1345 (S.D.N.Y. 1995). The District Court is the most knowledgeable and efficient in deciding issues relating to the Consent Decree and the IRB Rules. Thus, the Court of Appeals decision to affirm the District Court's order was appropriate to promote judicial economy.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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